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ROLE OF COMPETITION IN FINANCIAL CONSUMER PROTECTION

This document is a compilation of the written country contributions submitted for Session VII of the 120th meeting of OECD Competition Committee on 26th February 2014. These contributions are based on a questionnaire circulated with the aim to feed into a survey initiated by the G20/OECD Task Force on Financial consumer protection, which is developing a set of principles, one of which concerns competition.

More documentation related to this discussion can be found at www.oecd.org/daf/competition/competition-in-financial-consumer-protection.htm

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DENMARK

1. Regimes and Institutional Architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

The responsibility for promoting competition and enforce the Danish Competition Act across financial services lies at the Danish Competition and Consumer Authority (DCCA). The DCCA's overall objective (mission) is to make markets well-functioning primarily by promoting competition.

The overall objective (mission) of the Danish Financial Service Authority (FSA) is to ensure financial stability and confidence in financial undertakings and markets. The main task of the Danish FSA is thus to supervise compliance with financial legislation by financial undertakings and issuers of securities as well as investors in the securities markets.[1]

1.2 Does promotion of competition constitute a specific objective for financial regulators/ supervisors? What is the relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

There is no hierarchy of objectives. The Danish FSA's primary objectives do not include promoting competition.

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

Only the DCCA can enforce the Danish Competition Act and EU competition law in Denmark, including e.g. merger control decisions or instructions to companies to revoke agreements that limit competition.

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

The Danish FSA monitors that e.g. listed companies or the stock markets comply with their statutory obligations in order to assure that they can meet their obligations towards their customers. The Danish FSA can only intervene when they find possible breaches in one of the Danish FSA's areas of responsibility which includes consumer protection, e.g. misleading practices and inadequate advice from financial enterprises.

1. The tasks of the DCCA: http://en.kfst.dk/About-us, The tasks of the Danish FSA: http://www.dfsa.dk/en/Om-os/Finanstilsynets-opgaver.aspx

The Danish FSA has started developing a strategy for early regulatory intervention in product development processes. The aim is to ensure that new investment products truly do serve the needs of customers to whom they are marketed. Among other things we are considering maybe to introduce e.g. more prescriptive requirements for the governance of product development as a part of a new strategy for supervising, and possibly intervening, in the financial firms' product development processes.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

Neither the DCCA nor the Danish FSA has the power to regulate price levels within financial markets. However the DCCA supervises the Danish Payment Service Act where the DCCA can regulate "unreasonable high" prices (when compared to costs) w.r.t. payment instruments.

In addition to supervisory activities, the Danish FSA assists in drawing up financial legislation and issues executive orders for the financial area.

2. Competition and Consumer Protection

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

In general the DCCA has a focus on consumer welfare and has increased its focus on demand side structures and dynamics when investigating and developing initiatives to promote competition on different markets, including the financial markets.

One example is an investigation of the competition in the Danish retail banking market published in April 2013. The DCCA recommends initiatives in five different areas to improve consumer activity and price competition on the retail banking market in Denmark. Some of the initiatives will ensure that the consumers can easily and quickly take more active and informed decisions without having to rely on the bank or bank consultant.

The DCCA is currently planning for further tests and investigations of how to implement the initiatives in a way that promotes competition as much as possible.[2]

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

In general there is room for improvement of price competition on the financial markets in Denmark e.g. in retail banking, insurance, pensions.

In April 2013, the DCCA published a report investigating competition in the Danish retail banking market, cf. above. The main conclusion is that there is significant room for improvement of price competition on this market. Banks are not sufficiently challenged on prices – neither by other banks nor by consumers.

2 . Full report available (Danish): http://www.kfst.dk/service-menu/publikationer-2013/. English summary available: http://www.kfst.dk/en/service-menu/publications/

Only few consumers are active e.g. search, compare, negotiate and switch, when they do business with the banks. Thus consumer pressure on the banks to offer favourable deals at low prices are low.

Supplyside behaviour enhances the problem. Danish banks focus primarily on parameters other than price when competing. Nearly four out of five Danish banks say that ’the relationship between the customer and the banking consultant’ is an important parameter, and more than half the banks find ’consulting’ and ’image’ to be important parameters.

If competition is effective, price is one of the most important means of competition. Intensive price competition will force the bank to keep costs low in order to be able to maintain or attract new customers by offering them a favourable deal at a low price.

’Relationship’, ’consulting’ and ’image’ are usually high-cost parameters if the bank wants to differ from other banks on the market. When price competition is weak there is no direct pressure to keep costs low. This means that costs and prices will be higher compared with a situation where price competition is effective.

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets? How is this balanced/prioritised against other duties?

The vast majority of regulation in the Danish financial markets is founded on EU-regulation thus the DCCA’s focus is primarily to ensure that new non-EU regulation does not create or increase barriers to entry.

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

The DCCA is not aware of such examples.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years?

4.1.1 On dominance:

The DCCA continues to monitor the remedies implementation following a 2003 merger decision. In October 2003 the Competition Council approved a merger between two large Danish mortgage lenders: Nykredit and Totalkredit. As a condition for the approval, Nykredit proposed a series of commitments in order to eliminate the detrimental effects of the merger.[3]

4.1.2 On market-wide issues, including price, interest rates or commissions:

On March 28th 2007 the Danish Competition Council decided that seven Danish banks for several years had violated the Competition Act by entering into an illegal agreement. The infringements consisted

3. Full text available (Danish): http://www.kfst.dk/Konkurrenceforhold/Afgoerelser/Raads-og-styrelsesafgoerelser/2003

of three parts: 1) a geographical market sharing agreement with the objective that the banks would abstain from opening branches in the towns where their head offices were located, 2) an agreement not to contact each other's customers actively and 3) discussion of confidential information of importance to the price and fee policy of the banks. In 2008 the seven banks accepted a fine of 4 million DKK.

On March 1st 2013 a new Danish Competition Act came into force. It amended the legal framework for sanctions. For instance, imprisonment for up to 18 months for participating in a cartel, provided the infringement was committed intentionally and was of a grave nature, particularly as a result of the scope of the infringement or its likely damaging effects. Under particularly aggravating circumstances, a sanction of up to six years imprisonment may be imposed. Such circumstances could for instance be that the cartel had a substantial scope or substantial harmful effects.[4]

4.2 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

The Financial markets are monitored in the same way as other markets. The Danish Competition Act regulates all markets the same way.

5. Comparability and Access

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products?

5.1.1 Disclosure of comparable information on price and product features or

5.1.2 Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons:

Several web sites for comparison of price (and sometimes terms) of different financial products are in place e.g. in the areas of insurance and retail banking.

Several web sites also allow consumers to put a fixed amount of savings on auction to get the best offer or to test the price and terms of one's current business with a bank or an insurance company in the market place.

Several web sites containing information to educate and help the consumers to take more active and informed decisions are also in place.

The sites are hosted by private companies or trade and/or consumer associations. The sites are not regulated.[5]

5.1.3 Measures to assist with switching, e.g. through reducing the administrative burden:

Some of the initiatives from the DCCA's report investigating competition in the area of retail banking will reduce the administrative burden of the consumers, cf. below.

4 . Full text available (Danish): http://www.kfst.dk/Konkurrenceforhold/Afgoerelser/Raads-og-styrelsesafgoerelser/2007

5 . Examples of websites: www.forbrug.dk, www.pengepriser.dk, www.forsikringsguiden.dk, www.comparo.dk, www.raadtilpenge.dk, www.mybanker.dk, www.banktorvet.dk, www.basalindlaanskonto.dk

The Danish Bankers Association has adopted rules on switching bank account according to the EBIC Common Principles on Bank Account Switching.

5.2 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

The DCCA are working intense with behavioural economics in the area of retail banking. As stated above the DCCA published a report investigating competition in the Danish retail banking market in April 2013. The main conclusion is that there is significant room for improvement of price competition on this market. Banks are not sufficiently challenged on prices – neither by other banks nor by consumers.[6]

One of the main reasons behind this result is that only few consumers are active on the retail banking market. When purchasing a loan from a bank, nearly four out of five Danish consumers only contact one bank – the one they normally use – to get an offer. Nevertheless, three out of four consumers state that they are sure that they benefited from the best conditions. Furthermore, most consumers do not negotiate prices or terms with the bank before accepting an offer for a loan. The relationship with the bank consultant is especially important for the consumers' behaviour and choices on the retail banking market

The DCCA recommends initiatives in five different areas to improve consumer activity and price competition on the retail banking market in Denmark. Some of the initiatives will ensure that the consumers can easily and quickly take more active and informed decisions without having to rely on the bank or bank consultant.

Insights from behavioural economics have been used to understand consumer behaviour and to develop initiatives. The DCCA is currently planning for further tests of the actual consumer behaviour to get a better understanding of how the consumers activity can be spurred e.g. in a situation where the consumers are applying for a loan or when they receive annual information on their business with the bank.

The English summary includes a short description of the recommendations along with the main conclusions of the report, cf. above.

Further, the DCCA is currently considering the possibilities of testing consumer behaviour in the areas of insurance, pensions and investment. The main focus of these tests would be to get a better understanding of actual consumer behaviour as to develop initiatives that work and promote competition on the relevant markets.

The Money and Pension Panel (hosted by the Danish FSA) have used insights from behavioural economics and nudging to develop teaching materials on budgeting, loans and savings targeting children from 13-15 years old and their parents. Furthermore the panel has used these insights to develop a budget app targeting young people from 18-25 years old, and an online test of household´s groceries shopping.[7]

The panel is currently developing an online e-learning game which will help the consumer to negotiate with his or her bank consultant (one of the initiatives in the DCCA report mentioned above).

6 . Full text available (Danish): http://www.kfst.dk/service-menu/publikationer-2013. English summary available: http://www.kfst.dk/en/service-menu/publications.

7 . Money and Pension Panel: www.raadtilpenge.dk, Link to materials: www.raadtilpenge.dk/da/Skole/FunnyMoney.aspx, www.lommebudget.dk, www.raadtilpenge.dk/da/Gode-raad/vaerktojer-til-din-okonomi/test-din-indkobskurv.aspx,

FINLAND

1. Regimes and Institutional Architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

1.1.1 The Finnish Competition and Consumer Authority

In Finland the responsibility for promoting and supervising competition across financial services markets rests exclusively with the Finnish Competition and Consumer Authority (FCCA).

The FCCA began operations on 1 January 2013. The agency was created by joining the Finnish Competition Authority and the Finnish Consumer Agency. The new agency increases the societal significance of competition and consumer issues. The legally mandated responsibilities of the joined agencies remain unchanged in the new agency.

The responsibilities of the FCCA relate to implementing competition and consumer policy, ensuring good market performance, implementing competition legislation and EU competition rules, and securing the financial and legal position of the consumer. The agency also handles the supervision responsibilities of the Consumer Ombudsman. The Consumer Ombudsman supervises the lawfulness of commercial practices aimed at consumers and the reasonableness of contract terms used by businesses.

The responsibilities of the FCCA include the formulation of proposals and initiatives to promote competition, the removal of regulations and rules that eliminate competition and the development of consumer policies and consumer protection. The FCCA also follows and assesses the competitive environment and developments that affect the position of consumers and provides statements on issues that may have an impact on competition and consumer policies.[8]

The objectives and duties of the FCCA have been laid down in the Competition Act, the Consumer Protection Act and the Act on the FCCA.[9]

1.1.2 The Financial Supervisory Authority

The Financial Supervisory Authority in Finland (FIN-FSA) is the authority for the supervision of Finland’s financial and insurance sectors. The entities supervised by the authority include banks, insurance and pension companies as well as other companies operating in the insurance sector, investment firms, fund management companies and the Helsinki Stock Exchange.

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8 http://www.kkv.fi/Page/71661344-b9e9-49f2-bdc0-c533afea001a.aspx

9 Competition Act (948/2011); Consumer Protection Act (38/1978); Laki Kilpailu- ja kuluttajavirastosta (661/2012), the Act on the FCCA

Financial markets in Finland are regulated by several different laws which are in turn influenced by EU legislation. The Act on the Financial Supervisory Authority (878/2008) took effect on 1.1.2009. The objective of the FIN-FSA`s activities is to enable balanced operations of credit institutions, insurance and pension companies and other supervised entities in stable financial markets. Its objective is also to protect the rights of the insured and foster public confidence in financial market operations. In addition, it is responsible for promoting compliance with good practice in financial markets and disseminating general knowledge about the markets. The FIN-FSA works for the benefit of the users of banking, insurance and investment services. These objectives and duties have been included in the Act on the Financial Supervisory Authority (878/2008).[10] There is no specific mention of competition as a separate duty or objective. The preparatory work for this act states that the duties of the FIN-FSA would not include supervisory responsibilities relating to competition law. In the case of a breach of competition law, the FIN-FSA could intervene only on the basis of the breach of general requirements for authorised business activity.[11]

1.2 Does promotion of competition constitute a specific objective for financial regulators/supervisors? What is its relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

No, competition is not a specific objective for the FIN-FSA.

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

No.

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

No.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

No. However, the pricing of basic banking services is supervised for consumer protection reasons. The FIN-FSA supervises that customers' rights to basic banking services under section 134 of the Credit Institutions Act are realised and that such realisation is not impaired by, for instance, unreasonable pricing.

2. Competition and Consumer Protection

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

The FCCA has the sole responsibility to promote and intervene in competition affairs across the Finnish financial services markets. In consumer affairs the FCCA has shared responsibility with the FIN-FSA.

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10 http://www.finanssivalvonta.fi/EN/ABOUT_US/Pages/Default.aspx

11 Governmental bill 66/2008, in particular as regards the proposed section 3.2.2

Competition law is harmonised to a great degree throughout the European Union. The FCCA applies the concept of consumer welfare and consumer detriment as based on assumptions made in established EU case law and as supported by national case law. When assessing competition cases the FCCA considers the impact on end consumers and when appropriate evaluates consumer harm.

There is some co-operation between the FCCA and the FIN-FSA regarding e.g. some of the FCCA`s competition cases from the financial sector. The FIN-FSA advises its customers to contact the FCCA in competition issues and passes on concrete references e.g. from consumers to the FCCA.

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

This phenomenon is also familiar on the Finnish financial services markets.[12] The retail banking market in Finland is dominated by three large players. Because none of these players has a dominant market position there is no tool in the Competition Act to tackle these problems. However, the problem of hidden or contingent charges, for example, has been addressed by consumer protection measures.

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services market?

High entry barriers or potential entry barriers and other restrictions on competition in the financial sector can reduce the number of firms competing and increase concentration. This may lead to higher prices for the consumer than if the barriers did not exist. Barriers to entry can, for instance, be governmental regulations, investment requirements, economies of scale or customer loyalties.[13]

In addition to restraints of competition in the private sector, the FCCA also investigates competition issues caused by regulation and public sector activity. The FCCA also provides statements on proposed legislation that do or could potentially affect competition. The number of statements requested from the FCCA concerning legislative reforms has grown every year. The FCCA is also represented in working groups preparing legislation.

Moreover, co-operation with the FIN-FSA, the Bank of Finland and advisory meetings with e.g. the Federation of Finnish Financial Services and with individual financial institutions concerning the various issues are important to prevent entry barriers in the financial services market.

Please see the competition cases related to removing entry barriers from the financial market (next question).

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

N/A

[12] The doctor of laws/Assistant Director Kalle Määttä of FCCA has analysed the relations of competition and consumer policy in his article “The convergence of competition and consumer policy: is there any?”

[13] Competition in Nordic Retail Banking, 2006, p. 9.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years:

4.1.1 On dominance?

The FCCA (in 2009 The Finnish Competition Authority, FCA) had the following competition case on dominance in the financial services market in 2008-2009.

In December 2008, the FCA sent a request for a rejoinder to the member banks of Automatia, in which it took the preliminary view that Automatia and its member banks had joint dominance in the cash dispensing market in Finland. The service fees charged by the banks from their customers for the withdrawals made from the new operators' banks were suspected to lead to abuse of joint dominance by creating obstacles to the entry of new ATM-operators. In the request for a rejoinder, the service fees charged from the withdrawals made from the new operators' banks were considered partially unfounded, compared to the costs incurred from the withdrawals. The commitments provided by the banks were sufficient to remove the suspected competition restraint and further investigations were hence not necessary.

Nordea Bank Finland Plc, OP-Pohjola Group and Sampo Bank Plc had, following negotiations, given commitments on the pricing of their ATMs to the FCA. The aforementioned banks own the Automatia Pankkiautomaatit Plc, which has its own Otto ATM network. In the future, the banks undertook to price their customers' Otto ATM withdrawals and the withdrawals made from the ATMs of the new ATM operators with debit cards in a non-discriminatory manner. The Automatia Pankkiautomaatit Plc has been the only company offering ATM services in Finland in the past few years.

Before the commitment decision, the banks incurred roughly one euro's worth of more costs from the Visa withdrawals made from the ATMs of the new operators than they did from the Otto withdrawals. As regards MasterCard withdrawals, the cost difference was roughly 60-65 cents. After the decision, the difference in the service fees between the withdrawals from the ATMs of the new operators and the Otto ATMs was not allowed to be higher than this cost difference.

By its decision, the FCA aimed to secure fair competitive conditions in the cash distribution market. Sound and non-discriminatory conditions ensure that the services and service providers which best meet the preferences and expectations of the customers prosper in the market. As a result of the FCA's decision, the services fees charged by Nordea, the OP Group and the Sampo Bank from their customers for the withdrawals made from the ATMs of the new operators decreased.

The expanding ATM-network increases the freedom of choice of the customers and the trade both regarding service providers and the payment methods used. The increase in the number of ATMs improves the possibilities of the consumers to withdraw cash and places the operators within the trade on a more equal footing than before. The improved availability of cash ensures that cash remains a viable option to the payment cards which are becoming more expensive with the introduction of SEPA[14].

A more extensive ATM-network than before encourages the banks to differentiate their service supply and increases the competition between banks.

[14] The Single Euro Payments Area (SEPA) is a payment-integration initiative of the European Union for simplification of bank transfers denominated in euros.

The commitments of the banks and the FCA's decision based thereon was the quickest and most efficient solution to the existing competition problem. A Market Court procedure would have been considerably slower from the point of view of the ATM-operators and consumers.

4.1.2 On market-wide issue, including price, interest rates or commissions?

In 2011 the FCA (now FCCA) closed investigations of an alleged breach of competition law relating to the pricing of the Tupas service by Nordea Bank Finland (Nordea).[15] The so-called Tupas service is the solution offered by the Federation of Finnish Financial Services, an association of all Finnish banks, for user authentication in Internet services using the banks' access codes. The contractual terms for the use of this service are defined separately by each bank. According to the allegations of the complainants, Nordea practiced excessive pricing towards customers operating in the financial services market. During the investigations carried out by the FCA, Nordea began to change its pricing practices. In addition, it was found that the cost of the Tupas service amounted to only a fraction of those costs that the customers charged their own clients and that this alleged excessive pricing had not prevented entry into the market by new undertakings. The FCA therefore concluded that it had no grounds for action in relation to the allegations and decided to close its case.

4.2 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

The monitoring is the same in all Finnish markets.

5. Comparability and Access

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products? For example:

5.1.1 Disclosure of comparable information on price and product features

Consumer protection legislation includes requirements on disclosure of comparable information on price and product features. In addition to sector specific legislation, these requirements are governed by the general marketing provisions in the Consumer Protection Act. The sector specific legislation is in many aspects based on EU legislation, but there are some national provisions as well.

For example, information presented in consumer credit advertising is regulated by a specific Chapter in the Consumer Protection Act, which is to a certain extent based on the EU directive on Consumer Credit. The consumer must be provided with sufficient information on price and other terms of the contract. The purpose of the mandatory disclosure of the information on the credit, and especially the annual percentage rate, is to facilitate making comparisons. The calculation of the annual percentage rate is harmonised by EU legislation. Another example of a mechanism to help consumers compare is the standard information form provided before the credit contract is signed.

Another example of a sector specific legislation is the EU proposal for a directive on basic payment accounts. In order to help consumers compare payment account fees throughout the single market easily, proposals by the Commission on the easy comparison of prices include three main mechanisms. Firstly, payment service providers should provide consumers with a list of fees charged for the services listed in a standardised terminology. Secondly, payment service providers should provide the consumer with a

[15] Decision of 13.5.2011, Dnro 1090/61/2008, 1120/61/2008, 1050/14.00.00/2009, 99/14.00.00/2010, 151/14.00.00/2010, 723/14.00.00/2010

statement of all fees incurred on their payment account at least annually. Thirdly, the Commission has proposed comparison websites to be established and regulated.

5.1.2 Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons

Please see above.

5.1.3 Measures to assist with switching, e.g. through reducing the administrative burden

Measures to assist with switching are included in the consumer protection legislation. The Consumer Protection Act includes general regulation on unfair contract terms, which may e.g. complicate switching. There are also provisions relating to switching in sector specific legislation. For example, payment account switching has previously been mainly governed by self-regulation, but the above mentioned proposal for a directive on basic payment accounts has a goal to improve consumers' possibilities to switch. The proposal takes into account that consumers are only incentivised to switch accounts if the process does not entail an excessive administrative and financial burden. The procedure for switching payment accounts to another payment service provider should be clear and quick. According to the proposal consumers should, for example, be allowed to ask the receiving payment service provider to perform the switch of all or part of the recurring payments, as well as transferring the remaining balance.

5.2 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

Yes, to a certain extent it has been used in, for example, planning of the supervisory actions and in statements concerning legislative initiatives. For instance, the limited rationality of consumers and the fact that consumers may be unable to make purchase decisions due to there being too much information, or the information being hard to understand or misleading has been taken into account in supervision cases and in legislative processes (e.g. obligations to provide standard information form on credit and key information document on investment products).

The FCCA (previously the Consumer Agency) has participated actively in the OECD work on these issues under the OECD Committee on Consumer Policy.[16]

[16] OECD Consumer Policy Toolkit

IRELAND

1. Regimes and institutional architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

In Ireland the Competition Authority is the principal agency with responsibility for promoting competition across all sectors of the Irish economy. This general mandate includes the promotion of competition in financial services but we do not have a specific mandate to promote competition in this sector.

The Central Bank of Ireland ('Central Bank') is the body responsible for both central banking and financial regulation. The Central Bank's remit was extended to financial regulation under a new regulatory structure which was formed by the Central Bank Reform Act, 2010, which amalgamated the Central Bank and the Financial Regulator. The Central Bank has no specific statutory responsibility for promoting competition across financial services markets.

1.2 Does promotion of competition constitute a specific objective for financial regulators/supervisors? What is its relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

Promotion of competition is not a specific objective of the Central Bank acting in its role as financial regulator. The Central Bank's key objectives as set out in its most recent strategic plan are:

- Restoring financial stability;
- Reforming the regulatory structure;
- Promoting a more consumer focused culture throughout financial services; and
- Influencing the monetary policy framework.

The Central Bank has prioritised financial stability as the cornerstone of its strategy for restructuring of the banking sector. The strategic plan states: *"Achieving and maintaining the stability of the financial system will continue to be the primary focus for the Bank over the next three years. The Bank's role in contributing to financial stability reflects the critical role a well-functioning financial sector plays in facilitating economic growth. It also reflects the importance of the banking sector to the transmission of monetary policy actions to the real economy".*[17]

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[17] Central Bank of Ireland Strategic Plan 2013–2015. Available to download at: http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Strategic%20Plan%202013%20-%202015.pdf

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

No. The Competition Authority is responsible for enforcing Irish and European competition law in financial services and all other sectors. The only other agency in Ireland with concurrent competition enforcement powers is the Commission for Communications Regulation ('Comreg').

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

No, the Central Bank has no powers to make structural interventions. However, a large part of the Irish retail banking sector is in public ownership as a result of the actions taken by the Irish Government during the banking crisis of 2008. The Irish banking landscape is dominated by the two pillar banks – Bank of Ireland and AIB - who command large market shares in the main market segments.

The Irish Government controls two banks – Allied Irish Bank ('AIB') and Permanent TSB – and holds a minority stake in the other pillar bank, Bank of Ireland. The Government's shareholding in the banks operates under relationship agreements (agreed with the EU/IMF/ECB Troika) which limit the extent to which the Irish Government intervenes in the day-to-day operations of these banks.

The Irish Government also has at its disposal emergency powers to merge banks in the event of a banking crisis.[18] Section 7 of the Credit Institutions (Financial Support) Act 2008 gives the Minister for Finance power to approve a merger between credit institutions where the Minister has formed the opinion that the merger is necessary to protect financial stability. This legislation disapplies the normal role of the Competition Authority in approving mergers and gives the Minister for Finance the power to approve mergers between banks which would otherwise be blocked on competition grounds. In 2011 the Minister for Finance invoked these powers to execute a transaction whereby AIB acquired sole control of EBS Building Society ("EBS").

It is Government policy to eventually sell its share in the pillar banks and the approach taken to this divestment has the potential to determine the structure of the Irish banking landscape for the foreseeable future.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

Yes, under Sections 149 and 149A of the Consumer Credit Act, 1995, as amended ('CCA'), regulated entities are required to notify the Central Bank if they wish to impose new charges or increase existing charges for providing any of the following services:

- making and receiving payments;
- providing foreign exchange facilities;
- providing and granting credit; and
- maintaining and administrating transaction accounts.

[18] Credit Institutions (Financial Support) Act 2008, http://www.irishstatutebook.ie/pdf/2008/en.act.2008.0018.pdf

Section 149 of the CCA applies to credit institutions licensed by the Central Bank, credit institutions pass-porting or 'branching' their services into Ireland and prescribed credit institutions. Section 149A of the CCA applies to bureaux de change and money transmission businesses if the money transmission business has no other authorisation but is providing money transmission services that do not fall within the definition of Payment Services, i.e. non-electronic payments such as cheques. New entrants are exempt from Section 149 CCA for the first three years of operation in the market after which time they must also notify their charges to the Central Bank (see paragraph 3.3 for further detail on Section 149 CCA).

A credit institution cannot impose a new charge or an increase to an existing charge, without the prior approval of the Central Bank. These charges are assessed by the Central Bank in accordance with the criteria laid down in the legislation as follows:

- the promotion of fair competition;[19]
- the commercial justification submitted in respect of the proposal;
- the impact new charges or increases in existing charges will have on customers; and
- passing on costs to customers.

Having considered the proposed charge(s) under the assessment criteria as set out under the legislation, the charges are rejected, approved at lower levels than requested by the entity, or approved in full by the Central Bank. Approvals, partial approvals and rejections are issued in the form of a Letter of Direction (setting out the maximum permitted charge) and the entity is legally bound to comply with this Direction. Credit institutions are free to impose any pricing differentials for the service up to the permitted maximum and are free to waive fees at their discretion.

2. Competition and Consumer Protection[20]

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

The Central Bank has primary responsibility for regulating financial services providers in Ireland. The Central Bank Reform Act 2010 transferred to the National Consumer Agency ('NCA') the function to provide consumer information and education on financial products and services, previously under the responsibility of the Central Bank. By virtue of the powers under that transfer, the functions of the Agency specified in Section 5A(5) of the Central Bank Act 1942, as they relate to financial services provided by regulated financial services providers, are also functions of the Central Bank.

As per a February 2011 co-operation agreement with the Central Bank, the NCA has agreed to forbear its functions in relation to financial services legislation, except the function regarding consumer information on financial products and services. However, the NCA reserves the right to enforce in the event that the Central Bank is of the view it will not take any action.

19 While the promotion of fair competition is one of the criteria under which an application for a charge under Section 149 CCA is assessed, the promotion of competition is not one of the Central Bank's stated strategic objectives.

20 With the exception of paragraph 2.3, the information in this section is provided by our National Consumer Agency.

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

Like many other countries, Ireland has experienced problems with the mis-selling of payment protections insurance and other investment products in recent years. However these problems arose from a lack of transparency and poor regulation of the financial services sector rather than from competition. In fact some of the worst financial scandals in Ireland occurred in the 1980s and 90s[21] when there was very little competition between banks in Ireland[22]. The Consumer Protection Code (the 'Code') was introduced in August 2006 as a response to the many financial scandals in Irish banking which went undetected for many years. The Code applies to the regulated activities of all financial services providers authorised, registered or licensed by the Central Bank. The Code ensures a consistent level of protection for consumers regardless of the type of financial services provider they choose,

The NCA recently contacted some regulated financial services providers in Ireland who failed to provide an email address to facilitate contact from customers on their websites and achieved a successful result.

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets? How is this balanced/prioritised against other duties?

In the aftermath of the banking crisis of 2008 which resulted in a substantial injection of state funds to support the banking system, Ireland committed to undertake a revised package of alternative measures in order to restore competition in the Irish banking market (see Appendix A). This package of measures was aimed at facilitating entry by new competitors and enhancing the consumer protection rules already in operation. The package includes a number of initiatives to facilitate entry:

- In order to incentivise electronic banking which has a lower cost of entry than establishing a traditional retail banking franchise, Section 45 of the Consumer Credit Act 1995 ('CCA') has been amended to recognise electronic communications relating to credit agreements in the same way as written, i.e. hard copy paper communications are currently recognised. Sections 30-35 of the CCA have been amended to no longer prohibit the use of electronic signatures with respect to credit agreements.

- To speed up the use of a more efficient payments system, the Irish Government committed to work to ensure migration of central Government Departments to the Single Euro Payments Area ('SEPA') within 12 months of publication of the SEPA Regulation, subject to banks and software vendors being in a position to provide the necessary solutions for this to happen.

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21 A High Court inspection of National Irish Bank ('NIB') found a range of illegal practices including the concealment of customers' funds from the tax authorities, mis-selling of financial products and systematic overcharging of customers. The High Court inspectors' report is available to download at: http://www.publicinquiry.eu/Reports/NIB_Report.pdf

22 AIB, Ireland's largest bank, was found to have used bogus non-resident bank accounts to aid its customers avoid Deposit Interest Retention Tax ('DIRT') the findings of a public inquiry into this activity is available here. http://www.publicinquiry.eu/Reports/CandGDIRT.doc

- A statutory credit register is to be established under the supervision of the Central Bank which will provide a centralised comprehensive database of credit information on all individuals and businesses. This is aimed at addressing the information asymmetry faced by new lenders.

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

A key element of the sectoral commitments agreed between the Irish and EU authorities was the reform of the system of price regulation as set out in Section 149 of the CCA.

Following an assessment in 2010 by the Competition Authority of the state of competition in the retail banking market which concluded that competition had deteriorated due to the banking crisis, legislation was introduced in 2012 which exempts new entrants from Section 149 for their first 3 years of commencing business in Ireland.[23]

The definition "new entrant" allows for credit institutions currently based in Ireland to move into segments of the retail market that they do not currently serve.

The reform of Section 149 as envisaged in the sectoral commitment package only applies to regulation of banking fees and charges. No change is envisaged to the existing Section 149 consumer information requirements on credit institutions.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years?

4.1.1 On dominance?

There have been no interventions regarding abuse of dominance.

4.1.2 On market-wide issue, including price, interest rates or commissions?

There have been no major interventions by the Competition Authority in the Irish financial services market in recent years. The main focus of the Competition Authority's activity in financial services on recent years has been through its advocacy role in raising the awareness of the need to protect competition even in times of crisis.

The Competition Authority made submissions to the Central Bank on the revision of the Consumer Protection Code in 2011[24] and the revised Consumer Switching Code in 2012[25] which reiterated the need for competition authorities and regulators to work together to ensure consumers' interests are protected.

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23 The 3-year exemption from Section 149 has been given effect in the Central Bank (Supervision and Enforcement) Act 2013.

24 Available to download at: http://www.tca.ie/EN/PromotingCompetition/Submissions/S11001.aspx

25 Available to download at: http://www.tca.ie/EN/Promoting-Competition/Submissions/Switching-personal-current-accounts.aspx

The Authority has worked closely with the EU Commission, the Department of Finance and the Central Bank in designing the package of measures outlined above to ensure that competition in preserved in the Irish banking market.

4.2 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

No, there is no specific mechanism in place for the Competition Authority to monitor cartel activity or other forms of collusive or anti-competitive practices in banking per se.

The Central Bank has enhanced its monitoring role in recent years and it does apply the conventional tests for market concentration such as HHI and C5 ratio. The Central Bank has also been given further resources to enforce its regulatory authority. While this gives the Central Bank access to a significant amount of granular data, it would appear that, in the absence of using formal powers to compel information, the Authority could only secure aggregated figures. Nevertheless, such information would be of use to the Authority in monitoring the market.

The Central Bank (Supervision and Enforcement) Act 2013 ('CBSEA') has enhanced the Central Bank's supervisory powers[26]. The Act includes new powers to impose directions on credit and financial institutions, widens the existing range of powers for authorised officers and has increased the level of administrative sanctions penalties. The CBSEA also provides for protections for whistle blowers.

5. Comparability and access[27]

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products?

In mid-2007, the Central Bank launched a personal finance website, which included six financial cost comparisons in a tabular form. In March 2010 the statutory function to raise awareness of the costs, risks and benefits of financial products for consumer personal finance information and education transferred from the Central Bank to the NCA.

Following an extensive review and redevelopment, revised financial product comparisons[28] ('Comparisons') were launched in an interactive manner by the NCA in October 2011.

At present there are 230 individual product options,[29] across nine different categories.[30] The nine categories are personal current accounts, student current accounts, credit cards, student credit cards, personal loans, student loans, regular savings accounts, lump sum savings accounts and mortgages.

26 Available to download at: http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0026.pdf

27 The information in this section is provided by our National Consumer Agency.

28 http://www.consumerhelp.ie/compare

29 As at 22nd January 2014.

30 The site also presents insurance cost comparisons on motor, home and life insurance. Due to the difficulties in presenting personalised quotations for insurance products in an interactive format, the Agency creates generic profiles which provide indicative information designed to incentivise consumers to shop around for quotes.

5.1.1 Disclosure of comparable information on price and product features.

The Comparisons are comprehensive as they display all relevant terms, conditions and costs for each product in a clear and accessible manner and they act as a one-stop-shop for consumers who wish to compare financial products. They also contain links that direct consumers to a large amount of surrounding content on www.consumerhelp.ie as a whole. Consumers can get a fuller picture of the products they are examining if they need to, without being bombarded by financial jargon. The site is designed for use by people without any prior knowledge of financial products.

5.1.2 Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons.

The Comparisons are the only impartial and non-commercial financial comparison tool in Ireland, as no products are being sold, advertised or recommended and they do not contain sponsored links. The stated purpose of the Comparisons is to enable consumers to easily compare financial products that are always up-to-date, in an impartial manner from a trusted and independent source.

There is a small number of commercially operated cost comparison sites offering current account information[31]. These sites are not regulated in any way and in contrast to the Comparisons banks do not have to make mandatory notification of fee changes to commercial sites.

The comparable information is displayed in two ways:

- Feature-based comparisons e.g. current accounts, student current accounts, credit cards and student credit cards. The data is presented in tables and users can find the information that is most relevant to them by:
  - Sorting results by what’s important to them;
  - Filtering out information they do not need; and
  - Comparing results of up to four products side-by-side across the screen.
- Search-based comparisons e.g. lump sum savings, regular savings, personal loans, student loans and mortgages. Consumers can use certain criteria to obtain results that are relevant to their needs. For example:
  - With personal loans, users can search for a loan of a particular amount over a particular term. The results show all the loans currently available along with the interest rate, monthly repayment and cost of credit for each.
  - With savings products, users will see how much interest the deposit could earn over 12 months, or over a fixed-period if they choose to view fixed-term accounts.
  - The lump sum savings option also provides consumers with the ability to compare instant access savings accounts rather than a fixed term lump sum savings account.

31 For example, www.bonkers.ie

5.1.3 Measures to assist with switching e.g. through reducing the administrative burden.

In 2010 the voluntary Code of Conduct on the Switching of Current Accounts (’Switching Code’) was put on statutory footing. The Switching Code applies to all credit institutions when providing current accounts to consumers in Ireland. The Switching Code covers all aspects of the switching process, delineates the roles of each party and includes timelines for the completion of the switch. The Central Bank is authorised to carry out inspections and credit institutions must be able to demonstrate that they are in compliance with the Switching Code.

As mentioned under 5.7, the functionality of the Comparisons provides users with the ability to sort, filter and compare the information to suit their own needs. By using the related content elsewhere on www.consumerhelp.ie, users are more informed and better educated about products before attending a branch, discussing with a provider or reviewing provider’s websites for products.

The Comparisons include a tool entitled ‘Clearing your credit card ready reckoner’, which helps users to work out how long it will take to pay off their credit card debt based on the card they currently have, and compares that with how much time it would take them if they switched to a different card, for example one with a zero per cent balance transfer offer.

The NCA conducts bi-annual quantitative market research which has examined the switching behaviour of consumers in Ireland since 2007. The results are published and designed to activate and incentivise consumers to consider their usage behaviour and assess alternative options.

5.1.4 Other

The Comparisons are promoted via online advertising and search optimisation to ensure that when consumers want to compare the costs and benefits of financial products, they can quickly and easily access the information.

The Comparisons have consistently shown to be some of the most visited pages on www.consumerhelp.ie and following user testing have proven very popular with consumers.

Feedback on the Comparisons is welcomed from the institutions or from consumers. Consumers are invited to contact the NCA with regard to any of the information displayed in the Comparisons via the ‘Contact Us’ section.

5.2 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

The NCA currently co-funds with the Central Bank, Comreg and the Commission for Energy Regulation (‘CER’), a research project which is being conducted by the Economic and Social Research Institute (‘ESRI’) which is examining consumer’s ability to value and compare complex product offerings. The overarching research questions that are being addressed through the programme are:

- How complex do products have to be before consumers begin to make systematic mistakes when valuing and comparing products?
- How do such cognitive limitations affect decision making in domestic energy, financial services and telecommunications?
- Can markets present products in ways that are more “decision friendly”?

The goal of the research is to generate outputs that will assist policymakers in designing effective interventions to aid consumer decision making. The research is mentioned in this context specifically as it will also consider the information that is provided to consumers via cost or price comparisons.

APPENDIX

State aid – Restructuring of Bank of Ireland

Subject: State aid SA.33443 (2011/N) – second restructuring of Bank of Ireland -

Ireland's Commitment to Enhance Further Competition in the Irish Banking Sector

Ireland committed to undertake a revised package of alternative measures in order to restore the competition in the Irish banking market by facilitating entry and expansion of competitors and enhancing the consumer protection in the financial sector.

1. Customer mobility and protection

1.1 Customer mobility

Specific Commitments	**Implementation Date**	**Lead Responsibility**
a. The Central Bank of Ireland will: Carry out a review of the provisions contained in the Code of Conduct on the Switching of Current Accounts; Ensure that any necessary changes to the Code of Conduct on the Switching of Current Accounts following its review will be published.	By Q2 2012 By the end of Q2 2012	Central Bank
b. Legislation will be enacted that will provide that Section 149 of the Consumer Credit Act, 1995 regarding price regulation and fees will not be applied to new entrants in their first 3 years of commencing business in Ireland.	By the end of Q2 2012	Department of Finance
c. The Government will implement the following measures unless the review of the Consumer Protection Code by the CB shows that they are not beneficial for the consumers A prohibition on bundling unless it can be demonstrated that there is a cost saving for	1 January 2012	Central Bank

consumers Consumers will be informed on the overall cost of the bundle and the cost of each item separately as well as the cost of exiting the bundle Where one or more financial products are sold in a bundle customers will be able to switch one or more of the products without penalty (apart from the loss of any 'loyalty' discount), they will be provided with easy access to information about switching out of one product in the bundle and they will be allowed to retain any product that they wish to keep with clear information of the costs involved.		

1.2 Provision of information

Proposed Measure	**Implementation Date**	**Lead Responsibility**
a. The NCA will redevelop the banking cost comparisons on its "itsyourmoney.ie" website to provide more and better information on available banking products. A mortgage rate comparison will be added. The site will be more interactive and will allow users to link to switching tips and to providers' websites for follow up. b. A user testing exercise will be carried out after six months of the implementation in order to assess the effectiveness of the NCA project and introduce any changes required.	Q4 2011 Q2 2012	National Consumer Agency (NCA)

1.3 Improved transparency to facilitate consumer decision making

Proposed Measure	Implementation Date	Lead Responsibility
Improvements in annual statements and notifications of changes in fees and interest charges[32]:- Banks shall provide deposit account customers with annual statements of interest earned. Banks when informing customers on changes in interest rates and charges shall include details of the old rate / charge, the new rate / charge and the difference in monetary terms (in the case of rate changes for loans not covered by the CCD and for mortgages, when provided to personal consumers)[33].	1 January 2012.	Central Bank

1.4 Financial inclusion

Proposed Measure	Implementation Date	Lead Responsibility
The domestic banking sector will be required to support and promote the availability of a basic bank account in the context of the implementation of the strategy agreed by Government for addressing financial exclusion.	Pilots will be launched Q 2 2012 National launch by end-2013.	Department of Finance

32 The Consumer Protection Code currently contains a number of provisions relevant to this area, however, these proposals represent refinements which will improve transparency for consumers.

33 This measure will not apply in the case of: credit agreements falling within the scope of the EC (Consumer Credit Agreements) Regulations 2010 under which creditors are required to provide information concerning changes in the borrowing rate as set out in regulation 14 of those Regulations and payment accounts falling within the scope of the EU (Payment Services) Regulations 2009 under which banks are required to provide information concerning changes in interest rates and charges on payment accounts as set out in Regulations 53 and 55 of those Regulations.

2. Entry of competitors

2.1 Electronic banking

Proposed Measure	**Implementation Date**	**Lead Responsibility**
a. Changes to the Consumer Credit Act		
Section 45 will be amended to recognise electronic communications relating to credit agreements in the same way as written, i.e. hard copy paper communications, are currently recognised	Q2 2012 at the latest	Department of Finance
Sections 30-35 will be amended (as it interacts with the Electronic Commerce Act 2000) to no longer prohibit the use of electronic signatures with respect to credit agreements	Q2 2012 at the latest	Department of Finance

2.2 SEPA migration

Proposed Measure	**Implementation Date**	**Lead Responsibility**
The State will work to ensure migration of central Government Departments to SEPA within 12 months of publication of the SEPA Regulation, subject to banks and software vendors being in a position to provide the necessary solutions for this to happen	12 months from the publication of the SEPA Regulation	Department of Finance

2.3 Improved quality and availability of credit history information and reporting by banks

Proposed Measure	**Implementation Date**	**Lead Responsibility**
a. Institutional arrangements for the provision of information on credit histories will be restructured to conform to best international practice for the provision of high quality credit history information. The Government will present to Dáil Éireann legislation to establish a statutory credit risk register[34].	Q4 2012	Central Bank /Department of Finance

34 Part of the EU/IMF Programme of Financial Support for Ireland update 28 July 2011.

Banks will be required – when making reports to credit bureaux - to distinguish between those customers who engage positively with lenders in relation to arrears and especially those with whom the institution has agreed a re-scheduled arrangement to allow new entrants to assess credit risk on a more granular level.	Q4 2012	Central Bank /Department of Finance

3. Corporate governance

3.1 Strengthening corporate governance in the financial sector

Proposed Measure	**Implementation Date**	**Lead Responsibility**
Credit institutions with a significant retail customer presence in Ireland will be required to ensure that no director becomes or remains a director of any other credit institution with a significant retail customer presence in Ireland, except where such entities are within their group. The commitment will be implemented in practice for all credit institutions with a substantial retail customer presence in Ireland by way of written confirmation from the Central Bank. Consistent with Government objectives for promoting competition, strengthening financial regulation and promoting the interests of consumers; the empowerment of the Irish Competition Authority, Financial Regulator the National Consumer Agency, with respect to the financial sector, shall be reinforced (e.g. envisaging additional financial and human resources or the enhancement of the power of sanctioning).	Q4 2011	Central Bank Central Bank /Department of Finance

ITALY

1. Introduction

In relation to financial services consumers often have to take decisions that imply the comparison of complex financial products. For customers change is an option if they can compare the different conditions offered and if the advantages of changing bank outweigh the costs. The difficulty in comparing the products and in identifying the most convenient solution might therefore result in low mobility from one supplier to the other and undermine the competitive process[35].

It is for this reason that, in analysing the competitive processes in the markets for financial services, the Italian Competition Authority has focused not only on the supply side but also on the demand side. Consumer behaviour with respect to financial services, namely retail banking services, has been investigated in two market studies (one concluded very recently at the end of 2013).

In particular, obstacles to customers' mobility were identified in the substantial lack of transparency and in burdens and difficulties experienced by customers when changing bank.

While the problem of switching costs for financial services is observed in many countries[36] the Italian Competition Authority focused on issues that characterised the national regulation and used the findings of the market studies as a basis to formulate suggestions and advocacy interventions aimed at facilitating switching.

2. The market study on the prices of banking services (2007) and advocacy interventions

In February 2007 the Authority concluded a market study on retail banking services. The market study had been opened following complaints on the level of prices for banking services in Italy allegedly higher than the prices of the same services in other European countries. The Authority conducted a thorough analysis on prices and investigated the reasons that could explain such differentials[37]. The survey revealed numerous structural and/or behavioural elements that helped explain the weak competitive dynamics in the sector. First and foremost, the investigation shed light on the unsatisfactory nature of customer choice, owing in great part to deficiencies in information[38]. The study showed that, in general,

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35 Some of these issues have already been addressed in the Italian contribution to the WP2 Roundtable on *Competition, Regulation and Retail Banking*, 2006. The present contribution focuses on developments after 2006.

36 See, for example, the studies "Monitoring consumer markets in the European Union" and "Consumer market study on the consumers' experiences with bank accounts switching with reference to the Common Principles on Bank Account Switching" (GfK, 2011 and 2012) and "Study on the costs and benefits of policy actions in the field of ensuring access to a basic bank account" (CSES, 2010).

37 The analysis was carried out on the basis of the replies to a questionnaire sent to a sample of 72 banks operating throughout the country, covering 68% of bank branches. Ten different customers profiles – based on the socio-economic characteristics- were used for the sample.

38 A provision contained in the Banking Law, and removed only in 2006, allowed banks to change conditions unilaterally (ius variandi) and to inform the customers by posting a notice on the Official Gazette. The

banks did not provide a summary document listing the costs of services normally applicable to current account transactions (deposits and payments) but gave a separate informative note on each service. As a result, comparability of offers among different banks was very difficult.

The study also highlighted various obstacles to customers' mobility, including the costs for discontinuing several banking and/or financial services, such as the fees for closing a current or securities account or early mortgage repayment, in addition to the delays and uncertainties faced by the customers as to the timing. Finally, the survey revealed the relatively high level of recourse to tying agreements consisting in making the sale of one service subject to the sale of another, without granting the possibility of acquiring them separately, leading to a further reduction in customer mobility.

At the end of the investigation, the Authority formulated several suggestions to help boost the demand-side pressure, with a view to developing stronger competitive dynamics in the market for the supply of banking services to final customers. To achieve greater transparency and make it easier to compare the costs of maintaining current accounts, the Authority suggested that banks: compile brief information leaflets enabling current account holders to immediately grasp information regarding decisions, such as the type of services offered and the overall cost per item, with all the different costs grouped into a single indicator; guarantee, at least for a minimum period of time, stability of costs for current account maintenance and transactions; develop sources of information independent of the banking system, to allow customers to compare current account costs suited to their own client profile (search engines)[39].

Both before and following the market study the ICA advocated changes in the regulation of banks in order to increase transparency and customers' mobility. In particular the Authority suggested that the information on the prices of the banking services should be provided in a synthetic manner so as to ensure easier comparability[40], facilitating switching.

The Authority suggested that a summary indicator (the Synthetic Cost Indicator), taking into account the different price components, should be provided to the customers both when first opening an account and over time, in order to be able to keep track of variations and to compare different offers. This suggestion was followed and in 2010 the Bank of Italy introduced the use of the synthetic cost indicator in secondary regulation, providing that banks had to report this information to the customers on an annual basis[41]. Specifically, the indicator is calculated by adding the fees and expenses (that is, respectively, the fixed and variable cost components) charged in the course of the year to a hypothetical customer opening a checking account at a bank and making a number of operations.

The Authority also advocated several measures that could ease customers mobility, such as the elimination of charges for closing an account and easier procedures to transfer a mortgage from one bank to another[42].

Authority called for the law to be amended in a report (AS 338 The 'ius variandi' rules in banking contracts, May 2006) and the ius variandi was eliminated.

39 Market Study on , 2007.

40 See Report AS394 on the "Obstacles to customers mobility in retail banking services, 28 May 2007".

41 See Bank of Italy, 2010,

42 See AS412 – Art. 10 of Law 4 August 2006, n. 248, 19 July 2007; AS431 – Mortgage portability, 23 November 2007.

3. The market survey concluded in 2013 and the new suggestions offered by the Authority

In March 2011 the Authority decided to open a second market study on prices of banking services and in particular current accounts, in order to monitor the evolution of the competitive dynamics in the sector of retail banking. In particular, in the time frame between the two market studies, there had been some changes in the Italian market for banking services, both on the structure, through a process of consolidation[43] and, as mentioned in the previous paragraph, in the secondary regulation with respect to transparency and information. These changes should have fostered, in the Authority's view, competitive developments in the sector.

However, several analysis and complaints pointed out to the persistence of the issues that the Authority had identified in its previous interventions.

The main critical elements identified by the Authority, both during the previous survey and in its advocacy interventions focused on:

- the level of prices and fees for services, still above the European average;
- the constraints experienced by customers, facilitating lock-in effects;
- the unsatisfactory information provided to customers, not easily and immediately comparable, and
- switching costs (monetary and administrative) connected to closing an account, resulting in low mobility.

The market study investigated the trend in prices of banking services in the period between 2007 and 2012, using the synthetic cost indicator, with respect to six different profiles of customers (similar to those used in the previous market study and that the Bank of Italy subsequently inserted in the aforementioned secondary legislation). The analysis was carried out using data from 52 banks and more than 14,500 branches.

The results showed that improvements in price dynamics were less than expected and that some of the criticalities already observed in the previous market study still emerged.

Only online banking accounts showed a positive competitive dynamic and a reduction in prices, while no significant – less than 1% - improvements where observed in prices for "traditional" bank accounts. In particular the data showed a decrease in prices only for certain typologies of account holders (young customers) and for certain periods. The analysis also showed a wide dispersion in prices with significant differences in offers for the same profile of customers.

The study also showed that the mobility rate of account holders (measured as the incidence of the accounts opened and closed on the total) ranged between 10% and 12% and had been substantially stable throughout the years, both among different types of accounts within the same bank (intra-bank) and among different banks (inter-bank). This despite the fact that, from the analysis carried out in the market study, it emerged that price differentials might result in savings from a minimum of about € 100 to a maximum of € 180 per year.

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43 On the evolution of sector see also the Italian contribution to the Competition Committee on Roundtable on Competition, Concentration and Stability in the Banking Sector, February 2010.

The main explanation in the low mobility rate was found in the lack of information, notwithstanding the adoption of the synthetic cost index, and in the difficulties and uncertainties (especially in terms of timing and tying of services) that customers experienced when switching. An interesting result is that the switching rate is also very low at the intra-bank level (where supposedly the time and administrative burden of changing should be less) showing that customers are generally little aware of more convenient offers for their profile available within their bank.

The Authority concluded that further improvements in fostering customers' information and mobility could contribute to increase the competitive dynamics of retail banking services.

4. The new suggestions formulated in the conclusions of the market study

The Authority formulated the following suggestions in order to address the main difficulties highlighted by the results of the market study:

1. Further improve the level of transparency of the information

- The Authority suggested to reconsider the forms of communication of the synthetic cost indicator to the customers (currently provided with information sheets). In particular it suggested that the synthetic cost indicators of the accounts offered by the bank should be shown at ATM machines, with the aim to make the research of the best conditions simple and quick. Moreover, when asking for the balance relating to their account on ATM machines customers should be informed about the synthetic cost indicator of their account

- Banks should be obliged to communicate to their clients, at least yearly and with the adequate evidence, new typologies of accounts available informing the clients about the existence of offers at better conditions.

- Lastly, the Authority suggested that research engines, independent from the banks, should be developed, enabling the comparison among different offers.

2. Eliminate tying between current accounts and other banking services

- In particular, according to the Authority, it is necessary to ensure the elimination of all unnecessary restrictions, contractual or effective, between bank accounts and other services/products (mortgages, administrated savings, insurance policies).

- On the informative leaflets and on the communications provided to the customers, banks should clarify that in order acquire services or products it is not mandatory to open a current account with the bank.

3. Reduce time for closing bank accounts

- The Authority suggested to put a mandatory timeframe - 15 working days – to complete the closing of current accounts, in line with the proposal contained in the European Directive on bank accounts currently under discussion.

- In order to ease the closing of accounts also in presence of tools which entail debts (such as credit cards) the new bank could substitute the old one undertaking all of the possible risks.

JAPAN

1. Introduction

The issue of consumer protection in financial services is mainly handled by the financial authorities (the Financial Services Agency) in Japan. On the other hand, Antimonopoly Act prohibits abuse of superior bargaining position, and the Japan Fair Trade Commission (JFTC) addresses the said abuse in relation to trade practices in financial services. While the victims of the abuse of superior bargaining position are usually enterprises (mainly small and medium-sized enterprises), such enterprises can also be regarded as consumers of financial services in a broad sense. Therefore, the JFTC's activities in relation to the abuse of superior bargaining position in the financial sector is considered to be a part of discussion.

As recent examples, therefore, this paper will present in 2 below the case of the abuse of superior bargaining position by a major bank against enterprises as borrowers, where the JFTC has taken legal action. It will also present in 3 below "the Survey on Business Practices between Financial Institutions and Enterprises", in an attempt to contribute to appropriate trade practices between financial institutions and enterprises.

2. The case of the abuse of superior bargaining position by a major bank

A major bank that had the largest total assets among Japanese banks at the time (91 trillion Japanese Yen at the end of March 2005) conducted the following acts against enterprises that had relationships with the bank through loans and whose bargaining positions were supposed inferior to that of the bank, in processing loan procedures.

The major bank forced the borrower of the loans as described above to purchase a interest rate swap [44] by stating or suggesting that such purchase was a precondition for granting the loans, or that, without the purchase, the borrower would be unfavourably treated when obtaining the loans.

As the borrower would have had difficulties in its business activities if it did not obtain the loans from the major bank, the borrower was in a position in which, to maintain the loan transactions, it had no choice but to comply with a variety of requests from the major bank in addition to accepting the conditions for loans, which means its bargaining position was inferior to that of the major bank.

By taking advantage of its superior bargaining position over the borrower, the acts as described above taken by the major bank to force the borrower to purchase the interest rate swap (i.e. a product or service other than those related to loans) unjustly in light of normal trade practices, fell into the abuse of superior bargaining position in violation of Article 19 (Prohibition of Unfair Trade Practices) of the Antimonopoly Act. Accordingly, in December 2005, the JFTC issued a recommendation decision against the major bank for the elimination of such acts.

[44] An interest rate swap is a financial derivative contract in which enterprises swap different types of interest rates in a contract period that are calculated based on notional principal amounts (calculated principal amounts for the calculation of interest) that are set up between the entrepreneurs.

3. Survey on Business Practices between Financial Institutions and Enterprises

The JFTC has long been watching the actual situation of unfair trade practices between enterprises that obtain loans ("the borrower enterprises")[45] and financial institutions[46], in which, for example, financial institutions sell financial products to the borrower enterprises by taking advantage of their superior bargaining position in the transactions. The JFTC has revealed such trade practices by publishing "the Survey on Business Practices between Financial Institutions and Enterprises" in July 2001[47] and in June 2006[48].

Since then, amid changes in the economic situation, such as financial crisis after the collapse of Lehman Brothers and the appreciation of the yen, the JFTC carried out a follow-up survey on the actual situation of trade practices between financial institutions and the borrower enterprises and published the results of the survey in June 2011[49].

In this 2011 survey, in the same manner as the previous survey, the JFTC sent questionnaires to the borrower enterprises regarding whether or not the borrower enterprises had ever received requests for loans without their own applications ("the requests for loans") or whether the borrower enterprises had ever received requests for higher interest rates than specified in the agreements ("the requests for higher interest rates"), or whether or not the borrower enterprises had complied with such requests against their will.

Based on the results of the survey, the ratio of the enterprises that received the requests for loans declined from 40.5% in 2006 to 22.6% in 2011. The ratio of the companies that received the requests for higher interest rates also declined, from 13.2% to 4.3%. In addition, of the borrower enterprises that received the requests, the ratio of the borrower enterprises that complied with the requests against their will declined from 31.9% to 17.6% (in the case of the requests for loans) and from 78.0% to 64.6% (in the case of the requests for higher interest rates). As these figures show, the overall situation has been improving. This is considered to be attributable to the progress in compliance initiatives taken by financial institutions.

However, compared to the survey undertaken in 2006, there were no major declines in the ratio of the borrower enterprises that found it difficult to turn down various requests from financial institutions or in the ratio of the borrower enterprises that, as a reason for complying with the requests against their will, answered that they felt it would otherwise become difficult to obtain future loans. Moreover, the ratio of the borrower enterprises with the answer that they had not changed the financial institutions they borrow from stood at 71.8%, which may indicate that it was not necessarily easy for the borrower enterprises to change financial partners. For these reasons, it was pointed out, as notes for financial institutions in making

45 Enterprises with a record of short-term borrowings in financial statements

46 Financial institutions include banks, shinkin banks and credit unions, but exclude government affiliated financial institutions, nonbank financial institutions (enterprises that carry out credit operations by receiving registrations in accordance with Article 3 of the Act for the Control of Moneylending Business, etc., without carrying out deposit operations), securities companies, insurance companies and trust companies.

47 "Survey on Business Practices between Financial Institutions and Enterprises – Survey results from the perspective of unfair trade against borrowers –"(July 4, 2001; Japan Fair Trade Commission)(available only in Japanese)

48 "Survey on Business Practices between Financial Institutions and Enterprises" (June 21, 2006; Japan Fair Trade Commission)(available only in Japanese)

49 "Survey on Business Practices between Financial Institutions and Corporations – 2011 follow-up investigation report –" (June 15, 2011; Japan Fair Trade Commission)(available only in Japanese)

various requests, that the financial institutions need to take careful steps in such a manner that the borrower enterprises would not consider that they would be unfavourably treated in future loans and other transactions unless they comply with the requests.

To ensure that fair and free competition is maintained and promoted in the financial market and so on, the JFTC expects that each financial institution will promote further compliance-related initiatives, and will ensure that its employees are fully aware of "Viewpoints from the Antimonopoly Act[50]" presented by the JFTC in the recent and previous surveys, and that it will continually review and inspect its trade practices. If the JFTC finds a case where fair and free competition is impeded, it will rigorously enforce the Antimonopoly Act.

50. In the 2006 survey, the Japan Fair Trade Commission stated as "the Viewpoints from the Antimonopoly Act" that acts taken against the borrower enterprises by financial institutions with superior trading positions, including establishing or changing conditions for loans unfavourably, making requests to purchase their own financial products or services, forcing the commencement of business with their affiliates, etc., and restricting transactions with competitors of the financial institutions and involvement in business activities of the borrower enterprises would become problems under the Antimonopoly Act.

KOREA

1. Preface

The Global Financial Crisis in 2008 triggered the authorities in each country which mainly focused on supervision of financial soundness before, to pay their attention on financial consumer protection as one of the important economic issues. However, in spite of the efforts made by each country to protect financial consumers, information related to financial products is still difficult for financial consumers to understand therefore they have no choice but to make improper decisions without fully comprehending the financial products they purchase.

Under this market structure, in order to reduce information gap between financial institutions which sell the financial products with expertise and financial consumers, financial information should be provided in a way that consumers can easily understand financial products. In addition, as financial products sold through mis-selling such as false or overstated advertisements can incur financial damages to consumers, there should be subsequent measures that can swiftly recover the damages and strictly sanction unfair behaviours when disputes occur.

Below is the current condition of works and efforts with regard to promoting competition by the competition authority and financial authority in Korea to support consumers so that they can easily search, compare, and switch financial products.

2. Divided roles of regulatory bodies to protect financial consumers

In Korea financial authorities are in charge of supervising soundness of financial institutions and protecting financial consumer in principle. However, regarding unfairness of the financial terms and conditions, the Korea Fair Trade Commission (hereinafter "the KFTC") investigates whether financial terms and conditions are unfair or not and reviews unfairness upon the request from financial authorities. And unfairness of financial products' false labeling and advertising is investigated by the competition enforcer and the financial authorities.

The competition authority deals with cases such as cartels, abuse of market dominating position, or unfair trade practices, but in terms of mergers between financial companies the Financial Services Commission (hereinafter "FSC") has the power to approve the merger of this kind and it is stipulated, as an essential process before the approval of the merger, that anti-competitiveness of the merger should be reviewed under consultation with the KFTC.

Meanwhile, the Korea Consumer Agency and the Financial Supervisory Service, the branch institutions of the KFTC and the FSC respectively, are conducting works of investigating and analysing transaction behaviours in the financial sector; notifying any conducts of violation; recovering damages; and resolving disputes. The authorities are putting efforts to relieve information imbalances by providing information on cautionary factors in financial transactions, and instances of successfully resolved disputes.

3. Measures to boost competition in the financial market

The Monopoly Regulation and Fair Trade Act(hereinafter "MRFTA"), a general competition law which applies to all of domestic businesses can also be applicable to unfair behaviours in the financial service market. However the Article 35 of the MRFTA requires the establishment of the Korea Fair Trade Commission as the body taking exclusive charge of performing the objectives of the Act. Accordingly, it is difficult for financial regulators to apply the Act.

Price level and the structure in financial markets such as interest rate and commission fee should be the factors voluntarily determined by the market in principle, so financial regulators cannot directly regulate them.

4. Review of financial terms and conditions

According to the Financial Investment Services and Capital Markets Act legislated in and enforced from Feb 2009, and the Specialized Credit Finance Business Act amended in Aug 2009, all the financial terms and conditions notified to or received by the Financial Services Commission should be reported to the Korea Fair Trade Commission and the KFTC should review the terms and conditions and request corrections of unfair adhesion contracts.

In March 2011 the KFTC, in order to secure objectivity of the review of financial terms and conditions, created a guideline for reviewing financial adhesion contracts. The guideline set review criteria for types of major unfair adhesion contracts: i) provisions on requirement of adding changed contents of contract ii) provisions allowing companies to unilaterally set or limit contents of contract, and iii) provisions allowing termination of contract without giving notification.

In July 2012, based on the review guideline, the KFTC reviewed terms and conditions used by banks and the Commission, regardless of the reasons attributable, requested for the correction of 76 unfair adhesion contracts including the terms and conditions that provide banks of immunity from responsibility; pass responsibilities to customers and attribute all the damages to counterpart companies.

In 2012 the KFTC received reports of 1,542 unfair financial terms and conditions from the Financial Services Commission and completed the review of 836 cases and asked the FSC to correct 135 unfair terms and conditions. With regard to terms and conditions of credit cards reviewed by the KFTC in November, the KFTC requested for correction of 59 unfair provisions in the adhesion contracts whose causes of changing various added services of credit cards applies unfavourably than those of relevant laws and which do not even reflect provisions of post notifications.

5. Provision of information on financial products

In the financial market, the number of consumer damages incurred by financial products is likely to increase continuously unless the issue of information imbalances between businesses and consumers is resolved. As complex financial products with risks that their earnings would be changed responding to market conditions in the future are continuously introduced in the market, it is necessary to put efforts to protect financial consumers with relatively lower expertise in predicting the market than those of businesses.

The financial products carrying a range of risks in investment have significant influence over lives of ordinary citizens and controlling those products after financial dispute is difficult. Therefore it is necessary to provide correct information that would help consumers make right decisions as well as coming up with post-measures against individual cases. If unfairness of concerned financial products can be relieved before or at the early stage of launching financial products, consumer damages would be preventable.

5.1 Information provided by competition authorities

The KFTC built up and has started to offer "Smart Consumer (www.smartconsumer.go.kr)" service for the public since 2012, an information portal for consumers which gathers and provides many types of consumer information by connecting to 102 websites of 68 government bodies and public institutions that produce the information. In order to help consumers make reasonable choices without being deceived by false comparative information, the Korea Consumer Agency and other consumer advocacy groups are offering information about items closely related to people's daily lives after comprehensively comparing the price or quality information.

In 2012 information on 60 Valuable Annuity[51] which 22 life insurance companies are selling was open to public after being compared and analysed by the Korea Finance Consumer Federation. A guide for purchase was provided with the contents including comparative information and analysis on effective yields of each product by the sales channel such as insurance agents or banks, as well as providing common knowledge on annuity insurance and tips helpful for obtaining insurance.

5.2 Financial authorities' measures to provide information

The Financial Supervisory Service is operating a comparative disclosure system for financial product under the purpose of guaranteeing consumers' right to make choices and increasing competition. Consumers are allowed to compare information about insurance such as deposit interest rate, premium, and terms and conditions and commissions for products through associations. In addition, the FSS ordered the number of complaints received by financial companies, and instances of being sanctioned to be officially disclosed at the webpage of the FSS or those of other financial companies.

According to the Article 89(2) of the Regulation on Supervision of Banking Business, webpage of the Korea Federation of Banks officially discloses comparative information of each bank such as deposit interest rate, lending rate, default interest rate and other various kinds of commission. In terms of insurance products, when insurance companies and agents have a contact with future policy holders, they individually provide information necessary to compare premiums of each product and manage the contract, and at the same time the information is disclosed at the online webpage.

6. Sanctions on anti-competitive behaviours in financial markets

6.1 Application of competition law to financial markets

The KFTC deals with competition related cases such as cartels, mergers and firm concentrations in the same manner even though the cases occurred in financial markets. The KFTC and the financial regulator signed a MOU in 2007 for having co-operation in areas in need of mutual work co-operation including cases related to merger of financial companies, cartels, and unfair trade activities and since then the KFTC has been maintaining close co-operation with the financial authority. The MOU signed contains the ways to enhance efficiency of regulation such as minimising Financial Service Providers' burden which comes from duplicated investigations or double sanctions of the two authorities.

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51 Valuable Annuity (VA): Annuity invests most of its paid-in premiums into funds for securing pension for retirement savings. The reserve changes based on the investment performance of the funds, and will be paid as savings for retirement.

6.2 Instances of imposing sanctions against cartels

6.2.1 Overview

The KFTC has detected and strictly sanctioned cartel activities related to price of financial products and commissions in an effort to protect financial consumers. 13 cartel activities were found in banking, insurance, and credit information service sectors for the recent 7 years from 2007 to 2013, and the KFTC imposed surcharge or filed complaints against those cases.

6.2.2 Major case

16 life insurance companies mutually agreed on the level of individual insurance products' assumed interest rate[52] and officially disclosed rate of interest[53] from 2001 to 2006. Those businesses had colluded in order to prevent loss of their customers and secure a stable profit and loss by setting interest rate lower than that of under competition.

Before finally fixing the interest rate which is adjusted periodically and repeatedly, each insurance company mutually gave and shared a record of determining interest rate. Along with other face-to-face agreements which are systematic and collective, this type of agreements were easily made and disseminated through unofficial and individual ways of exchanging information such as having contacts via telephone.

The KFTC issued measures which prohibit cartels and information sharing and imposed surcharge of 360 billion won (equivalent of $ 3.4 million) because the Commission determined that the cartel formed by 16 businesses are falling under the Article 19(1)-1 of the MRFTA stipulating activities of fixing, maintaining or changing the price.

This case was dealt by detecting the cartel activities which had been routinely conducted, based on mutual interest of preventing profit loss of the insurance companies, in individual insurance market for a long period and then by imposing measures to fix them. Therefore, through the sanction, the case has its implication of rooting out long-time cartel activities in the insurance sector and breaking the price determination structure which had been maintained in the market for a long period. As a result it is expected that, with further facilitated actual price competition, the market's competitiveness would be bolstered and thereby lowering premiums customers should pay.

6.3 Major case of merger reviews

After reviewing Hana Financial Group (hereinafter "Hana Group")'s acquisition of stocks owned by Korea Exchange Bank (hereinafter "Exchange Bank"), the KFTC determined that products which are sold by Hana Group and Exchange Bank do not practically restrict competition in 13 relevant markets and the KFTC notified the result to the Financial Services Commission in March 2011. The merger is a horizontal combination of banks since it is an acquisition of bank by Hana group which already owns a bank, and major focus of the review was anti-competitiveness in markets related to foreign exchange dealing.

After reviewing the possibility of unilateral act in order to determine the anti-competitiveness caused by the combination of enterprises, it is found that competition in the relevant markets are severe as major

52 Assumed interest rate is included in premiums of fixed interest rate products, and the influence of the rate is about 85%. A difference of 1 percentage point results in 8% to 36% differences of premiums.

53 Officially disclosed rate of interest is one of factors determining future refund of floating interest rate products. When the rate goes up, insurance money would increase and vice versa.

banks are tend to strengthen their business of foreign exchange; and there is no incentive for price increase considering the position of the combined enterprise in areas except for foreign exchange dealing. After the merger, the company still cannot top the market and has just 40% of market share even in foreign exchange market, and increasing price only in the foreign exchange market is not easy given the fact that foreign exchange deals are done accompanying the works of giving or extending credit. When Exchange Bank raises the price, subsequently customers' switch to other banks is likely to be done easily.

When considering the possibility of cartel, there is no big change observed other than the number of market participants decreased from 16 to 15. And considering the trend of strengthening foreign exchange business by other banks, competition for market share is project to be harsh, and therefore the possibility of cartel does not go up.

7. Conclusion

Issues of whether the competition policies should focus on consumer welfare or should take other objectives such as macro economy or stability of system into account have been constantly raised with regard to the role of competition in protecting financial consumers. As a solution to these issues, ways such as obviously incorporating not only consumer welfare but also other objectives of financial markets when making systems for competition policy; and having other institution along with competition enforcers participated in decision making process. In the short run, efforts should be made to enhance capacity and commitment of competition authorities which are enabling them to appropriately respond to innovations and changes in the financial market while at the same time maintaining close co-operation with financial regulators.

MEXICO

1. Regimes and Institutional Architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

In Mexico, the promotion of competition across financial services is a shared responsibility. The aforementioned context is defined in Article 4 of the Law for the Transparency and Ordering of Financial Services (*Ley para la Transparencia y Ordenamiento de los Servicios Financieros*, LTOSF). The Mexican institutions entitled with the tasks are:

- The National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF[54]),
- The National Banking and Securities Commission (CNBV),
- The Ministry of Finance (SHCP),
- The Bank of Mexico (Banxico),
- The Federal Economic Competition Commission (COFECE[55]).

In addition to the above, in particular cases related to pensions, the National Commission of the Retirement Savings System (CONSAR) is also a competent authority. However, in these specific matters, CONSAR shares its responsibility with COFECE (see response question 73).

1.2 Does promotion of competition constitute a specific objective for financial regulators/supervisors? What is its relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

The main objective of the financial regulators in Mexico is to promote the development of a stable, transparent and efficient financial system. In addition, Banxico oversees the systemically important payments system in the country. Nonetheless, there is no particular hierarchical differentiation between objectives such as financial stability, consumer protection or economic competition in the normative frameworks of the regulators. However, the mandate to investigate and sanction anticompetitive practices is limited to COFECE .

It should also be noted that after the enactment of the previously mentioned Law in 2004 and subsequent reforms, the Banxico acquired the mandate to assess competition conditions in the financial

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54 Acronyms according to names in Spanish of the institutions.

55 Hereinafter referred to as COFECE or Commission.

sector, as well as to ask the opinion of COFECE in regards to competition conditions. Banxico also has the attribution to request an investigation by the Commission .

For further exemplification of the above, Article 4 of the referred provision states:

> "The National Commission for the Protection and Defense of Users of Financial Services, the National Banking and Securities Commission, the Ministry of Finance, credit institutions, limited object financial societies, or regulated multiple object financial societies, may request the Bank of Mexico to assess whether there are (or are not) reasonable conditions of competition with respect to active, passive and service operations of the aforementioned entities.
>
> The Bank of Mexico may also act ex officio, and may request the opinion of the Federal Competition Commission so that it [...] determines, among other aspects, whether or not effective competition exists, the presence of inflation, and the identification of respective relevant markets. Upon consideration of the opinion of the Commission, the Bank of Mexico, where necessary, will take appropriate regulatory measures, which will be implemented only during the time the conditions that motivated the action are prevalent..." (Article 4, LTOSF).

In addition, the National Commission of the Retirement Savings System (CONSAR) according to the Retirement Savings System Law (LSAR) will, "*ensure at every moment that the retirement saving systems present adequate competition and efficiency conditions. [...]. CONSAR may establish the necessary mechanisms to avoid absolute or relative monopolistic practices as a result of the conduct of the participants or market concentration. The aforementioned mechanisms shall be applied once COFECE has issued an opinion [...]*" (Article 2, LSAR).

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

The constitutional reform to Article 28 of June 2013, established COFECE as the Mexican competition authority, except in the broadcasting and telecommunications sectors, where the Federal Telecommunications Institute (IFT) has this mandate.

Consequently, Article 23 of the Federal Law of Economic Competition (LFCE) established COFECE as the competent authority in terms of preventing, investigating and fighting monopolies, as well as monopolistic practices and anticompetitive mergers. Hence, regulators of the financial markets do not have the legal attributions to enforce competition law in Mexico.

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

According to the LTOSF, and upon COFECE's opinion on the existence of effective competition conditions, Banxico will take the appropriate regulatory measures that will be sustained while conditions restricting competition persist.

However, if market conditions that led to the regulatory intervention of Banxico are prevalent, this institution has the faculty to "*suspend operations with credit institutions that violate the provisions of this norm*", without necessarily implying an intervention on merger matters.

It should also be mentioned that COFECE acquired new constitutional attributions that enable the divestiture of assets, rights, and shares of the economic agents in the necessary proportions to eliminate anticompetitive effects.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

Banxico has the attribution to regulate fees, interest rates and any other aspects related to transactions between financial institutions and their customers (Articles 4 and 4 bis, LTOSF). The CNBV and Banxico have the authority to regulate Interchange Fees and Commissions related to the Means of Disposition Networks (*Redes de Medios de Disposición*[56] (Article 4 Bis 3, LTOSF). The Bank of Mexico, upon consideration of the opinion of the CNBV, has the authority to regulate the fees that clearance houses apply for their transactions (Article 19, LTOSF).

2. Competition and Consumer Protection

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

There are several assessment instruments that have the main objective to evaluate whether the interventions conducted by the regulators result in positive impacts for consumers in this sector. Examples of the aforementioned are the Financial Inclusion Report published annually by the CNBV, and several other specific studies conducted by institutions such as Banxico[57].

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

In November 2006, the predecessor of the COFECE (The Federal Competition Commission – CFC) issued an opinion on the major issues that affected the efficiency and competition in markets related to the Retirement Funds Administrators (*Afores*). Several of these recommendations were implemented by the regulator in 2009.

The implementation of these recommendations appears to have resulted in favourable outcomes:

1. A wider range of specialised investment funds (*Siefores*), and the elimination of restrictions on portfolio diversification (investment limits),

2. A more transparent regime for balance fees,

3. Unified methodologies for the measurement of net income and the provision of more information to customers,

4. Prohibition of fees for changes between *Afore* accounts and,

5. Reduction of restrictions to changes between *Afores* (higher net return in the receiving Afore, when the investment regime is changed, or mergers of *Afores*),

6. Between other.

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56 Means of Disposition Network the set of agreements, protocols, tools, interfaces, procedures, rules, programs, systems, infrastructure and other elements related to the use of these means of disposition.

57 Examples of the studies conducted by Banxico are: Negrín, J., P. De la Cruz, M. Le y D. Ocampo. (2009). "Introduction of Basic Accounts in Mexico to Address the Issue of Access to the Banking System: Design and Expected Impact. Elizondo, A. and E. Seira (2013). "Information Disclosure, Warnings and Social Comparisons: Truth-in-Lending Effectiveness"

Nevertheless, given the current market design, there are other factors to bear in mind. For instance, the dispute for customers between service providers has been based on promotion and marketing strategies that increase operating costs, which are not necessarily translated in benefits for the workers, but in higher costs for the growth of low cost *Afores.*

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets? How is this balanced/prioritised against other duties?

The LFCE (Article 24, Section X) provides the COFECE with the mandate to issue opinions related to laws, circulars as well as administrative acts of the federal authorities, in order to assess the impact of such provisions in the market competition structure.

Despite of the fact that this attribution is of general observance, there are specific frames such as the Credit Institutions Law (LIC) that further assert the aptitude of the competition authority to provide opinions in specific matters.

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

The Financial Reform published in the Official Gazzete of the Federation (*Diario Oficial de la Federación, DOF*) in January 10, 2014, specifies cases in which the regulatory authorities of the financial system should notify the conduct of agents that impose market access restrictions to the COFECE (Article 144, LIC). In addition, this reform established a period of 180 calendar days for the COFECE to issue an analysis on competition conditions of the financial sector that includes specific recommendations to improve them (i.e. market access), if any.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years?

4.1.1 On dominance?

At the time of submission of this contribution, COFECE has not exerted its new constitutional attributions to order the divestiture of assets, rights, and shares of economic agents in the required proportions to eliminate anticompetitive effects.

4.1.2 On market-wide issue, including price, interest rates or commissions?

Measures carried out by Banxico:

1. Since 2004 to date, the Bank of Mexico has promoted the reduction of Interchange Fees (CI) in credit and debit cards payments (Financial System Report, RSF, 2013),

2. In 2010, the Bank of Mexico established that interbank operations fees could only be charged by ATM operators (RSF, 2010),

3. In 2007, Banxico promoted the reduction of Interchange Fees on direct services (domiciliación)(RSF, 2008),

4. In 2006, Banxico prohibited banks from charging Interchange Fees on interbank electronic fund transfers (Castellanos *et al*, 2008).[58]

4.1.3 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets

In principle, the LFCE has been applied in the financial sector as it has in every other sector. However, in the previously referred Financial Reform an expedite procedure for COFECE to decide on merger cases of financial institutions in liquidation situations, where bankruptcy could result in negative systemic risks in the financial system, was established.

In case of extreme urgency (as defined in Article 29 of the Credit Institutions Law) the application of the process established by the Competition Law in evaluating mergers and acquisitions can be exempted.

5. Comparability and Access

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products? For example:

5.1.1 Disclosure of comparable information on price and product features

Banxico is compelled by Law to publish every two months information and indicators on the behaviour of interest rates and fees of different market segments. Similarly, entities are required to disclose this information (fees, rates and comparative figures) to their customers through account statements sent by mail or electronic means (Article 4 Bis, LTOSF).

Total Annual Cost (CAT): The CAT incorporates all credit costs and inherent credit expenses. Banxico is responsible for setting the methodology for its calculations (Article 8, LTOSF). Financial entities are required to disclose to their customers the CAT costs in all of their credit products (LTOSF Article 15).

Total Annual Revenue (GAT): The GAT incorporates the capitalised nominal interest that is generated from passive transactions (i.e. savings and investment) minus the fees that are applied to each product. In this regard, Banxico establishes the calculation methodology of GAT (Article 8, LTOSF). Financial entities are required to disclose to their customers the GAT amount of their savings and investment products (Article 15 Bis, LTOSF).

CONSAR publishes in its webpage the actual fees charged by the *Afores*, a comparison of their performance as well as services (*CAS*).

5.2 Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons

In Mexico, regulators provide information and comparative tools for the different financial products in their websites. There are several calculators published by CONDUSEF (specifically in terms of car insurance, credit cards, savings / investment, mortgage, auto loans, personal loans and payroll). As well,

[58] Refer to Castellanos, S. G., D. Garrido and A. Mendoza (2008). “The importance of the Law on Transparency and Order of Financial Services to promote the use of systems and mechanisims for efficient payments in Mexico”.

the Bank of Mexico has tools to compare various loans, credit cards and mortgages, between other financial products.

In the specific case of auto insurance Santander bank has a comparative tool in its website available for the general public. Nonetheless, it would be desirable that more entities provide these tools.

5.2.1 Measures to assist with switching, e.g. through reducing the administrative burden

Article 4 bis of the LTOSF establishes that financial institutions may not charge fees that inhibit the mobility of clients to their competitors.

- Consumer credit: credits of this type can be paid through the contracting of a new credit with a different institution. In that case, the new provider, on behalf of its client, could make the necessary arrangements to terminate the initial credit (Article 10 Bis, LTOSF).

- Payroll accounts: the payroll-holders can ask their financial institution (originating bank) to transfer on a regular basis all the funds deposited in the original account to any other account in another bank (recipient bank). In addition, entities are obliged to fulfill these requests and the transfer petition can be submitted on behalf of the customer by the recipient bank (Article 18 LTOSF).

- Retirement Savings Funds: The change in the *Afores* can only be conducted once a year, but a second change can be made in the same period only if the recipient *Afore* has better performance than the originating institution. The recipient service provider can make the changes on behalf of the customer (Refer to CONSAR webpage).

5.2.2 Other

(N/A)

5.3 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

Behavioural economic analyses have not been implemented to date, but efforts had been made to have a greater understanding about users of financial services.

In June 2012, CONSAR and the National Institute of Statistics and Geography (INEGI) conducted the Survey of Occupational Trajectories that will be further used as input in the design of public policies related to Retirement Savings System. In addition, the CNBV and INEGI designed the National Survey of Financial Inclusion (ENIF), after application of this instrument, in June 2012 both institutions published the "ENIF, The Development of a survey application: the experience of Mexico "where they explained the process involved in developing this survey. The ENIF is expected to provide consistent and reliable information to measure the demand and use of basic financial services in Mexico.

Regarding initiatives without the participation of the regulators, in 2008, the bank Banamex and the National Autonomous University of Mexico (UNAM) applied the Financial Literacy Survey.

NETHERLANDS

1. Introduction on the oversight on financial markets in the Netherlands

In the Netherlands the oversight of the financial sector rests with three supervisors/regulators: the Authority for the Financial Markets (AFM), the Dutch central bank (DNB) and the Netherlands Authority for Consumers and Markets (ACM). In this paper, ACM sets out how these financial supervisors co-operate on the oversight of financial markets and offers some insight on the different financial supervisors and their competence regarding financial markets and financial consumer protection. This contribution also outlines examples of the work done by ACM on competition on financial markets.

Firstly, ACM, the Netherlands Authority for Consumers and Markets, is an independent authority created on April 1st 2013, when the Netherlands Consumer Authority, the Netherlands Competition Authority (NMa) and the Netherlands Independent Post and Telecommunications Authority (OPTA) merged. ACM promotes opportunities and options for businesses and consumers, with the goal of increasing consumer welfare. ACM monitors financial markets and enforces the Dutch competition legislation to prevent restrictions of competition.

While ACM, as a multi-functional authority, also protects consumer rights in general, supervising consumer rights regarding financial products is done by the AFM. The AFM has been responsible for supervising the operation of the financial markets since 1 March 2002. This means that AFM supervises the conduct of the entire financial market sector: savings, investment, insurance and loans. By supervising the conduct of the financial markets, AFM aims to make a contribution to the efficient operation of these markets.

DNB is the central bank and the prudential financial supervisor of the Netherlands. DNB has as its main objective to protect financial stability. Unlike AFM and ACM, DNB is a public company, with the Dutch state as its only shareholder. DNB is part of the European System of Central Banks (ESCB), and contributes to the execution of the monetary policy of the European Community.

2. Supervisory Powers

ACM has been given powers to ensure the effective and efficient oversight of markets for the purpose of optimising consumer welfare. ACM safeguards and promotes competition in Dutch markets, including financial markets. Cartels or abuse of dominance can harm consumers and business and ACM is empowered to intervene in such cases. Imposing sanctions is an important instrument, and ACM will not hesitate to use it in case of violations. In addition, ACM uses, among other instruments, (norm-conveying) dialogue, commitment decisions, informal opinions, monitoring, and market scans, as appropriate. Furthermore when large firms or organisations notify their intention to merge, ACM investigates the impact that proposed merger will have on competition. If it would have a negative impact on competition, ACM will attach conditions to that merger, or block it altogether.

In addition, within ACM, a specialist unit, the Monitor Financial Sector (MFS), conducts research into competition issues in the financial sector by issuing policy recommendations to protect and promote competition. The initiative for the MFS came from both the NMa (now ACM) and the Dutch Ministry of Finance. The Dutch Ministry of Economic Affairs is responsible for ACM (including the MFS), and the MFS is financially supported by the Dutch Ministry of Finance. The MFS does not focus directly on identifying and prosecuting breaches of the Dutch competition law, but rather conducts research into financial markets to analyse the nature and level of competition. This research often leads to policy recommendations or recommendations to the sector. The research conducted by the MFS will be further addressed in section 3 of this paper.

AFM and DNB use a divided model of supervision to implement the Dutch Act on Financial Supervision (Wft). While DNB maintains prudential supervision, AFM maintains behavioural supervision, focusing on ensuring orderly and transparent financial market processes, proper relationships between market participants and the exercise of due care by financial undertakings in dealing with clients. ACM does not supervise the Wft, except for some specific articles in the Wft that give ACM the power to supervise the access to payment systems.[59] As the powers of oversight of the financial markets in the Netherlands stem from different legislation and are the responsibility of different organisations, co-operation between the supervising authorities is essential.

3. ACM's experience

Consumers are central to ACM's thinking. Competition is important for furthering consumer welfare. A proper functioning competitive process, as such, protects consumers by ensuring low prices, high quality and/or more choices. Effects of increasing competition are not only expressed by lower prices, better quality and more choices, competition can also spur innovation. ACM aims to make an effective contribution to increase consumer welfare.

The research conducted by the MFS gives insight into competition issues in the financial sector that could harm consumers. These are some (recent) studies of the MFS on financial markets;

Price comparison sites: In 2012 the MFS evaluated the quality of 'price comparison sites' for savings products and sites for annual multi-trip travel insurances based on various criteria, such as accuracy, completeness, and transparency. The conclusion of this research was that the quality of most 'price comparison sites' for savings products and travel insurances is substandard. The MFS suggested improvements, such as updating the prices of all products on a daily basis and improving the quality of price comparison sites by the adoption of a code of conduct.[60]

Antitrust risks in property finance market: In a study on property finance, the MFS revealed that the risk of cartels in the property finance market has increased due to the limited number of players in that market. This is an issue because in recent years the number of players has in fact decreased. The limited number of market participants (indicating a high level of market concentration) offering property finance services combined with a lack of smaller providers and new entrants were factors that influenced the MFS to follow the developments in this market with extra attention.[61]

Shopping around for financial products: ACM has identified 15 of the most popular financial products for consumers, and it has calculated how much consumers could save by shopping around. ACM concluded that shopping around pays off, even for financial products, such as health insurance, car insurance and mortgages. By shopping around wisely, consumers stimulate competition between companies. If consumers do not exert any pressure, companies will innovate less, and prices are likely to

59 Payment systems are systems that process and execute payment orders. Thanks to such systems, funds can be transferred from one account to another. Payment service providers process these payment orders, and execute them as well. Payment service providers are organisations that provide payment services such as credit card companies.

60 www.acm.nl/en/publications/publication/6725/NMa-quality-of-price-comparison-sites-must-be-improved/

61 www.acm.nl/en/publications/publication/6703/NMa-study-provides-insight-in-antitrust-risks-in-property-finance-industry/

be higher. Price differences are much larger than most people think: a retired couple could save almost EUR 650 per year, and a young couple with two children could save up to EUR 1,000 per year.[62]

Study into switching barriers: Switching barriers are factors that make it harder for consumers to switch providers of financial products. In 2012 the MFS launched a study into switching barriers with regard to financial products. ACM is investigating whether or not consumers are faced with switching barriers with regard to financial products they heavily use.[63] In December 2013 ACM concluded that homeowners with a decreased income or with a mortgage higher that the value of the home ("under water mortgage") are not worse off when they do not switch between mortgage providers. At the same time, ACM advised banks to be more clear about the switching possibilities for these homeowners.[64]

Behavioural economics: In 2013 ACM published a study into behavioural economics and competition policy.[65] This study focussed on financial markets because irrational behaviour is (more) common in financial markets due to the highly complex products that are developed, which are very hard to understand for the average – inexperienced – consumer. ACM considers it likely that behavioural economics will add significant value to consumer protection and consumer empowerment, and recommended further research into these areas. Fortunately, the ACM has not only competition powers, but also regulatory and consumer protection powers. It can view potential market problems caused by behavioural biases from a broad perspective, and can determine which policy regime, or instrument, is best suited to solve particular problems.

National Mortgage Institution: In December 2013, the MFS also investigated the plan of the Dutch administration to create the National Mortgage Institution (NHI). The NHI was designed to stimulate investments in mortgage packages from large investors. The returns on these investments are guaranteed by the state. ACM has pointed out that the creation of the NHI could make entry into the Dutch banking market less attractive. Only a few major banks are currently active in the market, and competition has decreased since the outbreak of the financial crisis. This has led to higher mortgage interest rates. New entrants could stimulate competition. That is why ACM recommends that the potential negative effects on entry and competition should be taken into consideration in the decision-making process concerning the NHI. As a result of the comments made by ACM, the Minister of Finance and the Minister for Housing and the Central Government Sector have decided to adapt the plans for the NHI.[66]

Barriers in the banking retail markets: Currently the MFS is investigating which entry barriers or growth barriers exist in the Dutch banking retail markets. The banking sector in the Netherlands is highly concentrated: about 80% of the consumers and small and medium sized enterprises are a customer of one of the four large(r) banks in Netherlands. Of these four large banks two are owned by the Dutch State: in 2008, ABN AMRO was nationalised and, more recently, in February 2013, SNS REAAL became property of the State.

62 www.acm.nl/en/publications/publication/10947/NMa-shopping-around-for-financial-products-pays-off/

63 www.acm.nl/en/publications/publication/10810/NMa-launches-study-into-switching-barriers-with-regard-to-financial-products/

64 See for more information in Dutch: www.acm.nl/nl/publicaties/publicatie/12483/ACM-onder-water-hypotheek-leidt-niet-tot-hogere-rente-voor-huizenbezitter/

65 www.acm.nl/en/publications/publication/11610/ACM-publishes-study-into-behavioural-economics-and-competition-policy/

66 www.acm.nl/en/publications/publication/12399/ACM-Dutch-National-Mortgage-Institution-potentially-harmful-to-entry-into-banking-market/

Dutch mortgage market: In 2010, the MFS started with the so-called 'Mortgage Rate Quick Scan', a preliminary inquiry into the level of competition on the Dutch mortgage market. The results of the scan showed that the margins on Dutch mortgages have been relatively high since mid-2009, both by historical standards and in comparison with neighbouring countries.[67] High margins may point to a lack of competition.[68] In 2011, the MFS did a follow-up study. The conclusions of this study were that the mortgage margins in the Netherlands have decreased in the year 2011. The most important explanation for the lower margins was the entrance and gain of market share of several non-Dutch banks, causing a higher level of competition. In addition, in 2013, the MFS signalled an increase in profit margins which can indicate competitive issues in a market. The MFS has found various explanations for the increased profit margins. Capacity restrictions caused by increased capital regulation seem to be the most likely reason why the mortgage providers limited their supply of mortgages and increased their margins.[69] The financial crisis also resulted in the exit of foreign providers of mortgages from the Dutch market, after which the interest and profits made on mortgages rose. In 2014, ACM, and more particularly the MFS, will conduct more research on specific measures causing possible entry barriers on the mortgage market. The results of this research will be presented in the first half of 2014.

4. Financial consumer protection

As mentioned above, supervising consumer rights regarding financial products is done by the AFM. ACM seeks to co-operate, where needed, with AFM and DNB in those cases where they have a joint responsibility to protect consumers in the financial sector. This can deliver added value when detecting, analysing, solving and preventing problems on the financial markets.

ACM and AFM have regularly contact, on a general level as well as case specific. If necessary, we rely on each other's expertise. An example is the abovementioned evaluation of the quality of 'price comparison sites'. AFM was consulted on the research methodology used in this case. Another example of co-operation between ACM and AFM concerns The Regulation on Energy Market Integrity and Transparency (REMIT), the European directive which protects specific parts of the energy market from market abuse and insider trading. ACM supervises REMIT and AFM supervises the Market Abuse Directive (MAD), which is applicable to other parts of the energy market. In order to provide adequate supervision, co-operation between AFM and ACM is of great importance to detect violations of both directives. Certain manipulations can only be detected when AFM and ACM combine their transaction data. Besides facilitating the exchange of information, co-operation is also useful to facilitate exchange of knowledge and experience, as well as to balance investigational efforts.

As stated above, ACM aims to increase consumer welfare. It believes that competition in financial markets is a tool to increase consumer welfare. The most important reason for ACM to take action is to respond to the effect that an undertaking's behaviour on the market has on consumer welfare. In well-functioning markets, goods and services are offered at price/quality ratios, which serve the interests of consumers. Safeguarding competition is a cornerstone of the execution of our tasks: healthy competition creates opportunities and options for business and consumers. The importance of competition is generally accepted and empirically proven. An example of the working of competition in the Dutch financial market is the abovementioned the MFS study in 2011 into the mortgages market. The results of this study show that a higher level of competition resulted in lower mortgage rates for the consumer. From the demand-side

67 The higher margins are charged for both variable-interest mortgages and for mortgages with longer fixed-rate periods.

68 www.acm.nl/en/publications/publication/6408/NMa-Dutch-mortgage-margins-high/

69 www.acm.nl/en/publications/publication/11426/Profit-margins-on-mortgages-have-increased-as-banks-must-meet-ever-stricter-requirements/

perspective, ACM believes that consumers themselves generally know best what their interests are and how these can best be served. The core principle of free-market thinking is the sovereignty of individual consumers. This idea dovetails with European and international views on consumers. In the financial sector there are examples of initiatives to protect consumers such as ‘price comparison sites’ and intermediary advisors.

We may have to deal with situations in which trade-offs have to be made regarding consumer policy and competition policy. For example, although innovation is positive in general, in financial markets there may be innovations which are harmful for consumers. In financial markets highly complex products are developed, which are very hard for the average consumer to understand. Often these products carry a high risk, which is difficult for the consumer and other banks to observe. Although the consumer has a certain amount of individual responsibility, insights from *Behavioural Economics* show that consumers tend to use certain heuristics to simplify decision-making. Individuals may take decisions only based on a selection of the information provided, limiting their ability to make optimal choices.[70]

ACM’s oversight style is that the impact of our interventions is central and the instruments follow. The main objective is to solve market and consumer problems. ACM subsequently selects the instrument or a combination of instruments that offers the highest probability of producing a structural solution to the problem. In financial markets, our experience shows that the solutions for identified problems are often found in consumer empowerment, rather than in product regulation or other types of regulation.

5. Conclusion

The shared competences of ACM, AFM, DNB and the relevant ministries, as outlined in this paper, ensure the oversight of the financial sector in the Netherlands. Cooperation in competition, consumer protection and prudential supervision is essential in order to fulfil the responsibility to protect the financial consumer.

[70] www.acm.nl/en/publications/publication/11610/ACM-publishes-study-into-behavioural-economics-and-competition-policy/

PERU[71]

1. Regimes and Institutional Architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

In Peru, the National Authority for promoting competition and protection of consumers' rights is the National Institute for the Defence of Competition and Protection of Intellectual Property (hereinafter, INDECOPI). In its turn the Superintendence of Banking, Insurance and Private Pension Funds (hereinafter, SBS) is responsible for the enforcement of the rules of prudential regulation and supervision in those three economic sectors.

1.2 Does promotion of competition constitute a specific objective for financial regulators/supervisors? What is its relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

The promotion of competition is not a mandate of the Peruvian financial regulator. The SBS objectives are to defend public interests and preserve the economic and financial stability of the institutions under its supervision. There is not an established hierarchy to pursue these objectives.

INDECOPI is the public body responsible for the protection of consumers' rights in financial services markets. According to consumer regulations, INDECOPI is the only public body with legal authority to resolve conflicts by means of administrative procedures. In its role of enforcement of consumer protection regulations INDECOPI can order corrective actions and/or impose fines when an infringement on consumers' rights is proven.

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

INDECOPI is the only authority that can enforce competition law in the financial services markets. The SBS is limited by its roles of supervision and prudential regulation.

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

The financial regulator has not competency to intervene over competition issues. However, all financial institutions require an authorisation from the SBS in cases of transformation, merger and corporate spin-offs.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

71 This questionnaire was elaborated by Rodolfo Tupayachi, vice-manager of the Economic Research Department at INDECOPI, in collaboration with SBS officials, under the supervision of Javier Coronado, Manager of the Economic Research Department.

According to the Peruvian Banking Law, financial institutions are free to determine their interest rates and fees for all the financial products and services offered in the market.

2. Competition and Consumer Protection

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

The SBS requires financial institutions to use the regulatory definition of annual effective cost and return rate in all their contracts and marketing materials, and to clearly disclose such information to their clients. Also, the SBS has been publishing detailed price comparison tools with information on interest rates, annual effective costs and return rates, costs associated with savings products, prices of motor third party liability (MTPL) insurance policies, and coverage of schoolchildren personal accident insurance policies. This information is expected to have had a positive impact on competition benefiting consumers through price reductions.

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

According to press reports, the recent work done by the SBS on the reduction (elimination) of commissions that financial institutions apply with any additional o complementary services,[72] in the end creates more commissions or an increase in the interest rate to customers.[73] However, there is no systematic evidence that has been processed to evaluate the alleged causality of commission reductions over interest rates and other costs.

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets? How is this balanced/prioritised against other duties?

The actual framework that regulates entry in the Peruvian financial market seems to work effectively. That said, there are no specific proposals at the moment aim at reducing entry requirements in this market.

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

There is no information in this respect.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years:

4.1.1 On dominance?

No specific actions have been taken in recent years.

72 The apparently insufficient justification for the application of these commissions has had an impact on the increase of the effective cost of credits to final customers.

73 See for example: http://elcomercio.pe/politica/opinion/editorial-falsas-promesas-noticia-1632377; http://gestion.pe/tu-dinero/aspec-clientes-bancos-reclaman-alza-comisiones-2073141.

4.1.2 On market-wide issue, including price, interest rates or commissions?

According to the Peruvian Banking Law, financial institutions are free to determine the interest rates and fees for all the financial products and services offered. However, through a number of specific regulations the SBS has established some parameters that financial institutions should follow when setting charges related to the provision of services. For instance, financial institutions cannot impose fees and charges if the related services are not additional or complementary to the main product or service demanded by customers.

Also fees and charges applicable to credit cards, loans, saving accounts, current accounts and short term deposits must be disclosed using unique names established by the SBS.

Interest rates must be defined in an annual effective form, using also an annual effective cost rate and return rate, when applicable. Those definitions have to be clearly stated in financial contracts.

4.2 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

There is not a different approach in the surveillance of the financial services markets with respect to other markets so far.

5. Comparability and Access

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products? For example:

5.1.1 Disclosure of comparable information on price and product features

Since 2002, the SBS has been periodically publishing comparative information of costs (fees, insurance, account maintenance, etc.) associated to specific loan products, such as mortgage, consumer and small businesses loans for specific loan amounts and periods of time (e.g..: Consumer Loans for US$ 4 000 in 12-monthly payments).

This information is continuously updated through a software application called “Registry of Interest Rates, Fees and Other Costs” (RETASAS, by its Spanish name) which is published online in real time at the SBS website. This application also contains information for saving accounts.

5.1.2 Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons

Financial institutions are required to publish on their websites a list of interest rates, fees and charges. This price list must be published in an easily accessible place to all customers in every branch. There are also information requirements, besides the price list, that should be found in financial institutions websites such as contract clauses, financial formulas, loan simulation programs and frequently asked questions. Finally, there are brochures made by financial institutions with general information as well as common procedures and frequently asked questions.

5.1.3 Measures to assist with switching, e.g. through reducing the administrative burden

There is no information in this respect.

5.1.4 Other

There is no information in this respect.

5.2 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

SBS regulation is designed to ensure that financial institutions disclose, clearly and fairly, the key features of their products and services. Nonetheless, these measures may have little impact on consumer behaviour if they do not understand why it is important to read in detail the contractual terms or are not able to understand them. Then, it is as important as disclosing information to educate and guide consumers on the main features of financial services as well as making them conscious about the potential costs of financial services. The SBS is currently working on this issue as part of its institutional mandate.

The SBS created a webpage to disseminate financial educational concepts and a customer webpage, to provide consumer-oriented information on financial sector issues. Also the SBS developed a Financial Educational Program for School Teachers (PAD) and other training modules, educational materials and radio spots.

Likewise, INDECOPI has implemented a web based application *called "Mira a quien le compras"* (Check who you are buying from). This application allows consumers to obtain information about the performance of providers in the financial services market. The information of this application contains the number of sanctions, products and type of infringement committed by financial services providers regarding consumer protection issues. In this way, INDECOPI expect to promote a more proactive and mature behaviour of consumers in the protection of their rights.

POLAND

1. Regimes and Institutional Architecture

Financial services are a diverse sector, embracing activities by credit institutions, insurance firms, investment companies, exchanges, pension schemes as well as payment institutions and credit unions. Owing to its characteristics (in particular its impact on economic stability and high levels of information asymmetry) it is highly regulated and overseen by several general and sectoral regulators, such as Office of Competition and Consumer Protection (UOKiK), Financial Supervision Authority (KNF), the National Bank of Poland (NBP) as well as the Ministry of Finance, with a power to propose regulations in this area. The regulations aim at safeguarding proper functioning of the financial markets and their infrastructure (e.g. payment systems), ensuring stability of the financial system, its security and transparency, as well as the trust of market participants. Competition does play an important role from regulatory perspective, to the extent it does not conflict with the above-mentioned goals.

Protection of competition in all markets is a competence of the President of the Office of Competition and Consumer Protection. UOKiK's President is also responsible for prosecuting infringements of collective consumer interests. A large number of cases concerning financial services sector demonstrates that within the last decade it loomed large in UOKiK's enforcement priorities. However, there were few decisions involving anticompetitive practices, as majority of financial sector cases concerned merger control or consumer protection issues.

As mentioned, sectoral regulators also play an important role as facilitators of competition in financial services, since proper crafting and enforcement of regulations (especially those providing for necessary requirements to provide various types of financial services) has a significant impact on barriers to entry. Another regulatory area which is important from competitive perspective is non-discriminatory access to essential financial infrastructure. In particular, KNF safeguards non-discriminatory access to payment systems. Regulators don't have the powers to regulate prices in the market or to introduce pro-competitive regulatory remedies, like breaking undertakings up or forcing their vertical separation: such measures require legislative intervention, though regulators may achieve desired results with moral suasion alone.

The relation between regulatory goals and competition is not always a straightforward one. Sometimes the requirements of stability conflict directly with competition goals, as runaway rivalry among financial service providers – especially during the boom – may lead to underpricing of risk and proliferation of products undermining systemic stability, such as mortgages denominated in foreign currencies. Such policies may benefit consumers (able to pay very low prices for financial products) in the short run, but in the long run may leave them with debts they are unable to service and, consequently, weaken the financial system. Even if the collapse of the system is averted, consumers may still be worse off in terms of prices paid for financial products, as failures of weaker firms may leave the sector more concentrated and thus better poised to exert market power.

Before and during the recent crisis, noticing the build-up of risk, the KNF stepped in several times, issuing recommendations on good practices concerning risk management in retail loan exposure and mortgage-secured credit exposures. Even though they resulted in a restricted access to certain products (e.g. to foreign currencies denominated mortgages), they – along with other measures taken by the NBP and the Ministry of Finance – contributed to overall stability of the financial sector, which performed very well in the crisis.

2. Consumer Protection Activities

The financial sector is characterised by a high level of information asymmetry, due to often complicated nature of many of its products, making the market intransparent to consumers. Firms active in retail financial markets may even have incentives to increase this opacity, by presenting their offer in a non-standard or even misleading way, to the extent that it allows them to win more customers. The usual way to address this tendency is to impose information disclosure requirements on service providers, but such requirements are not without problems of their own, Even if adequate for highly financially literate persons, they may confuse average consumers, overwhelmed with information they do not fully understand. Service providers may also find ways around the disclosure provisions, allowing them to provide not fully accurate information without infringing the law.

For the last few years much of UOKiK's attention has been focused on consumer protection in financial services markets. In the 2010-2013 period, the authority issued over 120 infringement decisions concerning this sector and published 7 reports on the following issues: standard contract terms in life insurance, payment cards and individual pension accounts agreements; entrepreneurs offering consumer loans and life annuities; fees and advertisements of non-bank financial institutions.

The most recent enforcement experience of the UOKiK relates to investment products, sold by banks and insurers without providing adequate information on risks involved, and entailing very high fees, especially for customers withdrawing their funds. In January 2014 the President of the UOKiK fined one of the banks with **6.7 million PLN (ca 2.68 mln EUR) for misleading information concerning long-term investment and insurance product. In another decision, the same bank was fined for its promotional materials which failed** to provide essential information on the risks associated with investing money in long-term investment and savings products. At the time the decisions were issued, the UOKiK was conducting 10 other investigations involving this type of products in the context of potential collective consumer interests' infringements. The KNF is also involved in this sector, working on a recommendation concerning co-operation between banks and insurers and potential misselling of financial products. A number of collective suits against companies selling such products are also underway.

Lots of enforcement effort has also been devoted to a sector of non-bank lenders, attracting many complaints from consumers and in the public spotlight since the bankruptcy in 2012 of a large non-bank lender, whose CEO is currently facing criminal charges. The UOKiK monitors practices of such companies – in 2013 UOKiK published two reports from sector inquiries concerning non-bank financial institutions offering consumer loans. The first report covered issues associated with advertisements of these institutions; the second one was devoted to fees charged by them. Both analyses revealed a considerate number of irregularities, which resulted in proceedings regarding infringements of collective consumer interests.

The regulatory response involved the Ministry of Finance preparing a plan for amendments to the *Act on supervision of the financial market, Banking law* and some other acts. The amendments involve expanding KNF's competences concerning non-bank financial institutions as well as other measures aimed at increased consumer protection. In particular, provision of consumer loans will require a permit and registration, costs of a loan will be capped at 50% of the amount lent and the KNF will be given powers to request information from non-bank lenders.

Increased economic safety of consumers in financial markets is one of the UOKiK's top priorities in the draft "Consumer Policy 2014-2018".

3. Competition law enforcement

As already mentioned, Polish financial services sector is reasonably competitive, with relatively modest concentration in the banking sector (HHI by assets slightly below 600 in 2012) and higher, but markedly decreasing concentration in the insurance markets (HHI by gross premiums written at 1080 for life insurers and 1468 for non-life insurers in 2012). The number of competition law interventions in this sector is correspondingly rather low. Since 2006 there were 3 infringement decisions.

The largest and longest-running financial sector case concerns interchange fees (IFs). In 2001 an association of merchants lodged a complaint to the UOKiK, alleging that Visa, MasterCard and Polish banks were involved in price-fixing and creating artificial barriers to entry to the payments market. In December 2006 the authority issued a decision finding agreements on IFs restrictive of competition, while clearing banks and card organisations of the second charge.

The restrictive effect of the IFs was found in the acquiring market, where they created a de facto floor for the fees collected by acquirers from merchants (MSCs). According to the data collected by UOKiK during investigation, IFs accounted for over 80% of the MSC, making most of it non-negotiable in practice. The agreements were not indispensable for the functioning of the card system, as transactions could have been cleared at par, no interchange fees being subtracted from the amount sent to merchant’s bank. UOKiK also considered efficiency claims, as the parties maintained that even if the multilateral IFs are not necessary for the functioning of a card system, they contribute to making it more efficient and thus merit exemption from the prohibition on restrictive agreements. They also produced cost studies, purporting to show that Polish IFs met the exemption criteria. Upon closer examination, those claims turned out to be unconvincing.

On appeal, the first instance court reversed the decision, claiming that the restriction did not take place in the relevant market identified by the competition authority, i.e. acquiring market, but in some other market, which the court did not define. The appellate court found the opposite, remanding the case to the first instance, which in November 2013 found in UOKiK’s favour. This judgment has also been appealed by the parties.

As IFs remained at the highest level in the EU, a pressure was increasing for a regulatory solution. In 2011 the National Bank of Poland gathered all the stakeholders (including retailers’ representatives) in a working group to hammer out a workable plan for substantial reductions to the IFs. Despite initial success (a widely accepted plan had been worked out), the initiative foundered in mid-2012 on refusal of MasterCard to join it and the Parliament, where several legislative proposals to regulate IFs were prepared, stepped in. Even though Visa and MasterCard proceeded with lowering their interchange fees at the beginning of 2013, an amendment to the *Act on payment services* was enacted in August 2013, capping IFs at 0,5% of the transaction value.

Other antitrust decisions in the financial sector concerned a dominant insurer, PZU Życie., which held a dominant position in the market of employee group insurance (market share: over 90 per cent). In this market employers conclude agreements with insurance companies and as such are parties to the contract. The insurance coverage is provided to the employees if they agree to have the insurance premium deducted from their salary by the employers.

Several employers complained to the UOKiK that PZU Życie was infringing competition law by imposing unfavourable contract terms. In particular, the company required consent of at least 75% of the insured employees to terminate the agreement, although employees were not parties to the insurance contracts. The second charge referred to the insurance premiums – PZU Życie required that they be paid for three months after an employee quits the insurance program. According to provisions of the labour law, if an employee withdraws their consent to have this type of fees deducted from their salary, it is binding for the employer. In the context of the case it meant that employers were forced to cover the insurance premium from their own pockets. The behaviour of PZU Życie increased the costs of switching to alternative group insurance providers and as such was found to constitute an abuse of dominance. In October 2007 the insurer was fined and ordered to cease the infringement immediately. The insurer appealed and the case is still in the courts.

PZU Życie was also involved in a more recent case, concerning an agreement with a major local broker to share a regional market of collective schoolchildren insurance. It was concluded with an infringement decision in December 2011, appealed by the insurer.

4. Comparability and switching

The choice of best offer as far as consumer and mortgage loans are concerned is facilitated by the standard information form introduced by the *Act of 12 May 2011 on consumer credit*. The Act implements Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. One of the underlying assumptions of these regulations is that consumers have the right to make conscious decisions regarding their financial obligations. Therefore law imposes informational duties on banks to ensure that their customers are equipped with the knowledge necessary to choose the right offer, in light of their needs and financial capacity. Polish legislation goes beyond the Directive's regulation and extends the banks' duty so that standard information forms are also obligatory with respect to mortgage loans.

As regards switching financial products providers, it must be noted that in 2009 the Polish Bank Association (PBA), an industry body for the banking sector in Poland, following EBICS' (European Banking Industry Committee) document "Common Principles of Bank Account Switching", published recommendation concerning good practices of bank account switching by individual customers.

In 2010 UOKiK published a report about the problems of consumers' mobility on the national market of bank accounts. With some reservations, it contained a generally positive opinion about PBA's recommendation. PBA periodically presents data on bank account switching process according to the recommendation. Since 2010 the number of customers who transfer their accounts to a new bank has been increasing: from below 13 thousand in 2010 to above 18 thousand in 2013, though it remains low, compared to the number of bank account holders.

PORTUGAL

PART I : QUESTIONNAIRE

1. Regimes and Institutional Architecture

In Portugal, the enforcement of competition law is the responsibility of the Portuguese Competition Authority (PCA), transversal to all sectors of the Portuguese economy, of which financial services markets are no exception.

The regulation of the financial sector is conducted by the following three sector regulators: the Portuguese Central Bank (BdP), the Portuguese Securities Market Commission (CMVM) and the Insurance and Pension Funds Supervisory Authority (ISP). The need for articulation between the financial sector regulators led to the creation in the year 2000 of a forum for supervisory co-ordination - the National Council of Financial Supervisors, whose functions include the co-ordination among the authorities and the monitoring/assessment of developments concerning the stability of the financial system.

The Portuguese Competition Act (Law No 19/2012, of May 8th)[74] envisages the co-operation between the PCA and sector regulators in the application of competition law[75] (e.g. by means of opinion requests addressed by the PCA to the regulator, within competition proceedings concerning activities under that regulator's supervision). Furthermore, the co-operation between regulatory entities is also set out in Law No 67/2013, of August 28th, the legal framework applicable to independent regulatory entities. In what concerns the Portuguese Central Bank, the "*Legal framework for credit institutions and financial companies*" also accounts for the co-operation between the PCA and BdP, within the section of consumer protection and competition.

Therefore, while not responsible for the enforcement of competition law, financial regulators do co-operate with the PCA in the application of competition law to financial services markets.

While there is no statutorily specified objective stipulating it, BdP's intervention in the financial services markets can aim, among other things, at the promotion of competition. On the other hand, measures directed at consumer protection are often related to competition enforcement and advocacy. These measures may be explicitly designed to promote competition or have, as a by-product, an impact on competitive conditions. This was clearly the case with a number of measures adopted by the BdP aimed at increasing price transparency. This also applies to the other financial regulators, and we highlight, as an example, the "National Plan for Financial Education", an initiative of the National Council of Financial Supervisors.

In what concerns further powers of the financial regulators in Portugal, they are not entitled to directly intervene to address structural features of markets that hinder competition, e.g. high concentration or vertical integration, for example by imposing divestitures. In what concerns the regulation of price levels or price structures, the BdP issues quarterly announcements concerning the maximum fee levels for

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74 Law No 19/2012 replaced the previous Law No 18/2003, of June 11th.

75 According to article 5(4) of Law No 19/2012, of May 8th.

different types of consumer credit contracts, in accordance with Decree-Law No 133/2009, of June 2nd, which transposed Directive No 2008/48/CE of April 23rd on credit agreements for consumers to the national legal framework.

2. Competition and Consumer Protection

In Portuguese financial services markets there have been situations characterised by fierce competition on headline prices together with substantial hidden or contingent charges.

Nonetheless, we do not consider those situations as implying that competition in financial services delivered poor outcomes for consumers. Rather than being the consequence of fierce competition in headline prices, it is our understanding that these pricing structures emerge from the information asymmetry (between providers and consumers) and the "*consumer lock-in*" effect via switching costs that characterise retail banking markets.

Given the high degree of price complexity and opacity, consumers frequently cannot properly assess/comprehend/compare the terms and conditions of different banking products from different providers. From a behavioural economics perspective, there may also be some aspects of consumer behaviour which credit institutions take into account in the design of their pricing schemes. Furthermore, credit institutions can strategically manipulate pricing structures and manage price information disclosure and advertising so as to broaden the scope for consumers' rent extraction. In addition, in markets with significant switching costs and where price discrimination is possible, firms will have an incentive to compete for new customers, while exploiting their locked-in customer base, following a strategy of "*bargain then rip off*".

In mortgage loan markets, for example, this may imply offering low spreads in order to attract new clients, together with other complex and less transparent pricing items to which consumers are less sensitive because they cannot fully assess the associated expenses. This often entails, later on, high fees/commissions for other services, especially when the consumer is already locked-in. This type of pricing structure implies higher ratios of complementary to financial margins for credit institutions.

Again, we do not interpret these situations as necessarily being the result of fierce competition. On the contrary, we believe fierce competition delivers lower headline prices for new consumers, and lower competition together with price opacity results in poorer outcomes for locked-in or less informed consumers.

As such, the measures aimed at increasing the transparency, rigour and comprehensibility of pre-contractual and contractual information on the prices of different financial products, as well as those aimed at reducing switching costs, can also be understood as addressing this type of pricing strategy.

3. Barriers to Entry

The Portuguese legal framework applicable to credit institutions and financial companies closely follows the European Community directives on financial activity. It determines that the setting-up of credit institutions, financial companies or payment institutions requires prior authorisation by the BdP.

Furthermore, these institutions have to comply with prudential rules, aimed at ensuring the stability of the financial system, guaranteeing institutions' solvency and creditworthiness and protecting depositors and investors from losses associated with financial services providers' bad management, fraud or bankruptcy.

In the design of prudential rules, the overarching aim of ensuring financial stability is paramount, nonetheless avoiding unjustified barriers to entry.

4. Intervention

In terms of competition law enforcement, there have been no proceedings by the PCA in financial services markets concerning abuse of dominance in Portugal.

The PCA is currently investigating a possible sensitive commercial information exchange between credit institutions in the national market, which may breach article 9(1) of the Portuguese Competition Law and article 101 of the Treaty on the Functioning of the European Union (TFEU) [76].

Concerning market wide issues, there have been legislative initiatives in financial services markets, including on the level of fees/commissions charged by credit institutions which were regarded as switching costs. We highlight the following:

- Decree-Law No 51/2007[77], of March 7th, which benefited from an opinion of the PCA, establishes a ceiling for fees/commissions for the early repayment of mortgages[78]. Furthermore, Decree-Law No 51/2007, in conjunction with Circular Letters No 93/2007/DSB and No 41/2007/DSB issued by the BdP, bans additional charges related to the early repayment of mortgages with the exception of liabilities to third parties borne by credit institutions and passed through to consumers, as long as properly documented.

- Decree-Law No 133/2009[79], of June 2nd, which transposed Directive No 2008/48/CE, of April 23rd, to the national legal framework, establishes a ceiling for fees/commissions for the early repayment of fixed rate credits to consumption[80] and banned these charges in the case of variable rate credits to consumption.

- Decree-Law No 317/2009[81], of October 30th, which transposed to the national legal framework the Directive No 2007/64/CE, of November 13th, on payment services in the internal market, prohibiting credit institutions from charging fees/commissions for the closing of individual consumers and microenterprises'[82] banking accounts.

76 This case is under procedural secrecy and the investigation was only made public following news broadcasted in the media regarding the dawn raids carried out by the PCA in March 2013.

77 As amended by Decree-Law No 88/2008, of May 29th, by Decree-Law No 192/2009, of August 17th and Decree-Law No 226/2012, October 18th.

78 The legal provision established maximum fees of 0.5% and 2% of the repaid capital for variable and fixed rate loans, respectively.

79 As amended by Decree-Law No 72-A/2010, of June 17th and Decree-Law No 42-A/2013, of March 28th.

80 The legal provision established maximum fees of 0.5% and 0.25% of the capital in debt if there is, respectively, more or less than a year left to the end of the contract.

81 As amended by Decree-Law No 242/2012, of November 7th.

82 A "microenterprise" is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million – see Commission Recommendation, of May 6th 2003, OJ 124/36, of 20.5.2003, concerning the definition of micro, small and medium-sized enterprises.

The monitoring of cartels, collusive activities and mergers in the financial services markets does not differ from other markets. There is, nonetheless, a specificity in merger control following Law No 63-A/2008, of November 24th. This Law establishes that the acquisition by the State of credit institutions' shares or assets is not considered a merger between firms (article 20(1)). According to article 20(2), while such a public intervention is in place and whenever the possibility of accounting for the economic interest is foreseen in the competition legal framework, the protection of the public interest, the urgency of the financial sector situation and credit institutions solvability/liquidity issues shall necessarily be taken into account. Furthermore, article 20(3) states that if a public intervention of restructuring and recovery entails a merger which meets the notification thresholds, the merger can be implemented prior to a clearance decision by the PCA.

5. Comparability and Access

5.1 The joint report of the PCA and BdP on Mobility in the Retail Banking Sector in Portugal

Acknowledging the relevance of search and switching costs in retail banking, the PCA and the BdP undertook a joint analysis which led to the report "*Mobility in the Retail Banking Sector in Portugal*" published in December 2009.

This report reviews the theoretical literature on the categories and implications of search and switching costs, as well as the European best practices concerning the reduction of these costs in financial services markets. The report then proceeds to characterise the switching patterns and pricing structures in the Portuguese retail banking markets, as well as to assess the relevance of switching and search costs.

In order to collect information on the European best practices, the BdP and the PCA launched a consultation to their counterparts through the "*Groupe de Contact*" (Expert group of the Committee of the European Banking Supervisors - CEBS) and the European Competition Network.

The characterisation of the Portuguese retail banking sector was based on a number of relevant statistics computed using the data collected through information requests sent to the main Portuguese credit institutions. These statistics allowed for a thorough description of the mobility of private consumers and of small and medium enterprises and an evaluation of barriers to mobility and their impact on pricing strategies.

According to the results of this analysis, the Portuguese retail banking sector was characterised by low consumer mobility and substantial search and switching costs. While not relying solely on a single indicator and acknowledging the limitations of the churn rate, the report highlights the fact that the churn rate of consumers in Portuguese retail markets was lower than the European average. Accordingly, the longevity of the client/bank relationship was found to be higher than the European average.

The main barriers to mobility identified relate to consumers' difficulty in assessing and comparing the terms and conditions associated with different banking products, to bureaucratic costs associated with ceasing a customer relationship with a bank, to the degree of clients' involvement with their main bank, to the importance of the client/account manager relationship, to consumers' difficulty in "carrying" the acquired creditworthiness to the new bank, as well as to some closing fees/commissions associated with banking products. The costs associated with asymmetric information were found to be particularly important for small and medium enterprises.

In what concerns prices, the report shows that, in the case of mortgage loans, the lock-in effect translates into higher prices for old clients when compared with the terms and conditions offered to new customers.

The report also addresses the issue of cross-selling and its implications to consumer mobility in retail banking markets. The current account and the mortgage loan were found to be the most important anchor products for private consumers and the report shows a negative relationship between the cross-selling ratios and consumer mobility.

The report draws a number of conclusions concerning the negative impact of search and switching costs and identifies the main lines of action aimed at their reduction. Among these, we highlight the measures aimed at promoting information transparency, at simplifying the switching process, at limiting the levels of closing fees/commissions charged for some banking products as well initiatives aimed at promoting consumers' financial literacy. The report also concludes that the measures which had already been implemented at the time of the analysis, such as the ceilings imposed for fees/commissions for the early repayment of mortgages, had a substantial impact on consumers' mobility (the mortgages' transfer index doubled within a year of the legislative initiative).

5.2 Measures to increase price transparency and comparability

The BdP undertook a series of supply side measures aimed at increasing the transparency, accuracy, completeness and comprehensibility of pre-contractual and contractual information provided to consumers concerning the terms and conditions associated with retail banking products/services. The ultimate aim was to allow consumers to compare products beforehand and make better-informed decisions, fully aware of the price, risks and returns of any given financial product when signing a contract with a credit institution.

Concerning the disclosure of comparable information on price and product features, credit institutions have to comply with Notice No 8/2009 and Instruction No 21/2009, both issued by the BdP. According to these regulations, updated price information must be displayed in a well identified spot with open access, in a clear and comprehensible language, in all branches and on the website of the institutions. These regulations introduced changes to credit institutions' information duties (as set by BdP Notice No 1/95). In addition to interest rates, which are usually the most "visible" component, these regulations also made it compulsory for credit institutions to list other price items, such as the maximum level of fees, commissions and other charges. As such, the price lists of credit institutions have to be composed of a leaflet of commissions and charges and a leaflet of interest fees, in accordance with a standardised model. This model harmonises the price information of the different institutions and promotes comparability. Credit institutions are forbidden from charging fees/commissions which are not included in the leaflets, as well as from charging a higher value than the maximum level displayed.

Furthermore, the information duties of credit institutions concerning deposits and complex financial products are regulated by BdP's Notice No 4/2009 and Notice No 5/2009, respectively. These regulations aim at ensuring that the depositor has access to all relevant information concerning the characteristics of the products and contractual elements (through the submission of a standardised information sheet), promoting the pre-contractual comparability of different alternatives and the depositor's access to relevant information throughout the contract's lifespan.

The BdP has also intervened in price information in advertising campaigns (media, leaflets and emailing) launched by credit institutions, which are understood as having a substantial impact on consumers searching process and supplier/product choices. Notice No 10/2008 aims at increasing the transparency, veracity and rigour of the information provided to consumers by regulating credit institutions conduct on advertising campaigns. These regulations cover a wide variety of aspects, such as the scope within which certain expressions may be used in advertisement (to ensure veracity) and compulsory elements of information (to increase transparency), among others. There are also regulations specific to certain products such as, for example, the disclosure of the overall effective annual rate, as well as of a representative example, in the advertising of mortgage and consumption loans.

On the demand side, measures have been adopted to reduce searching costs by increasing consumers' financial literacy. Among these, we highlight the launching, by the BdP, of a Bank Customer Website with information on the main banking products, means of payment and interest rates, among other information. This website provides a direct access to the leaflet containing information on commissions and charges of all credit institutions covered by Notice No 8/2009. The website also provides a summary of the main legislation governing the provision of banking products and services, as well as a glossary of financial terms and FAQs.

There have been further initiatives aimed at improving financial literacy, such the "National Plan for Financial Education", developed by the National Council of Financial Supervisors (BdP, CMVM and ISP) in May 2011. This plan aims at increasing the general population's financial awareness, as well as the adoption of adequate financial behaviour.

Consumers in Portugal have access to simulators for banking products terms and conditions. These are available on the BdP's Bank Customer Website. Furthermore, most credit institutions provide these tools on their websites, at least for some financial product(s).

5.3 Measures to assist with switching

In what concerns measures to assist consumers with switching, some credit institutions (members of the Portuguese Bank Association) adopted the "Common Principles for Bank Account Switching" on March 1st, 2010. This set of principles aims at making it easier and quicker for consumers to switch their banking accounts and associated payment services from one bank to another. Both the new and the former bank are expected to co-operate, in order to facilitate the switch.

The new bank should provide the client with a guide of all the required steps to open a new account and to transfer the payment services, as well as assisting the client in the switching process, if he/she so requires. This entails obtaining from the former bank a list of all standing orders for credit transfers and direct debits associated with the old account and requesting the former bank to cancel them. The new bank is also expected to assist the client in notifying third parties about the new account details (e.g. employer, social security, entities with direct debit payment orders), in activating the permanent credit transfer orders and updating the standing debit orders, in informing the client of any payment services transfer charges, as well as assisting the client in closing the old account.

If requested by the client or the new bank (upon client's authorisation), the former bank should provide all the information concerning the standing orders for credit transfers and direct debits associated with the old account and cancel these orders. The transfer of the remaining balance to the new account and the cancelation of the old account are also responsibilities of the former bank.

According to these principles, the consumer should have free of charge access to all the required information for the switching process, if it is available through an automated process and does not reach back more than 13 months. In terms of the time length of the switching process, the former bank has seven days to provide the new bank with the required information to initiate the switching process and, after receiving the information, the new bank will have seven days to operationalise the payment services through the new account.

PART II: CONTRIBUTION TO THE DISCUSSION ON MEASURES OF COMPETITION FOR FINANCIAL SERVICES[83]

1. Introduction

In this note we discuss how to measure market power in financial services focusing on competition policy enforcement. We first discuss the standard approach to measure market power in competition policy. We then proceed to address some of the limitations of this approach in financial services markets, including those related to switching costs. We discuss complementary indicators of switching costs and consumer mobility which may be of use in those markets. Finally, we discuss an alternative approach, namely the direct measurement of market power through the specification and estimation of a structural model.

2. Measuring Market Power

2.1 Market Power Measures Arising from the Economics Literature

If firms compete in prices or quantities, economic theory defines "Market Power" as the ability of a firm, or a group of firms acting jointly, to profitably raise price above the competitive level.[84] The concept of market power is formalised in the Lerner Index, which measures the proportional deviation of price at the firm's profit-maximising output from the firm's marginal cost at that output. Denote price by p and marginal cost by c. The Lerner index is defined as follows:

$$\frac{p-c}{p}. \qquad (1)$$

It is possible to measure market power directly. We discuss this approach in section 4. Due to practical considerations, rather than conceptual divergences, competition policy enforcement uses a different, indirect method to measure market power.

2.2 The Standard Approach in Competition Policy

The ***Standard Approach*** of competition policy enforcement to measure market power is to: ***(i)*** define a relevant market, ***(ii)*** compute the market shares, and ***(iii)*** infer market power from market shares. This procedure is typically applied to all industries and complemented with additional information, whose nature depends on the characteristics of the industry under analysis. Hence, in principle, this ought to be the approach used to measure market power also in financial services.

The standard approach has been extensively discussed, and its strengths and weaknesses are well known. In sections 2 and 3 we will assume that the underlying methodology is adequate, and discuss some

83 This note was prepared by Pedro Pereira (ppereira@concorrencia.pt) and Ana Sofia Rodrigues (arodrigues@concorrencia.pt).

84 ***Competition***, the opposite of market power, can then be defined as whatever hinders the exercise of market power.

general difficulties with its application to financial services. [85] In section 4 we discuss an alternative approach.

The first difficulty with implementing the standard approach to financial services is market definition. Any coherent computation of market shares should be preceded by market definition. [86] Financial services pose several particular difficulties to market delineation that we briefly review next.

In retail banking, the range of services involved is very large and complex. Typically, firms sell multiple related services. This means that the analysis will potentially involve many services, such as: checking accounts, savings accounts, debit cards, credit cards, mortgage loans, etc. It is unfeasible to analyse such a potentially long list of services at the same time. One can focus the analysis on a subset of services, either because they are the most relevant or because the firms' market shares across services are positively correlated. However, this solution requires verifying the validity of either of the assumptions, which might be non-trivial by itself. Furthermore, with multiproduct firms, indirect effects among the different products influence firms' optimal pricing strategies.

In addition, since some of these services might be sold in bundles, some of the relevant markets may consist of bundles of services, rather than individual services. This further complicates the market delineation process.

An added complexity concerning market delineation in retail banking follows firms' ability to discriminate between types of customers. In the normal course of their activity, banks collect large amounts of information about their clients. This enables them to tailor their products to the consumers' characteristics and engage in complex segmentation strategies. For example, banks can charge prices that depend on the consumer's area of residence or for how long they have been clients. This adds complexity to market delineation.

Once markets are delineated and market shares computed, one moves to the inference stage. To the extent that firms sell multiple services, substitutes, complements and possibly bundles, a correct assessment of market power requires looking simultaneously at all of these services, and taking into account these indirect effects among products. If the number of relevant services is relatively small, this approach is feasible. Otherwise, one will be tempted to focus on a subset of services and inferring market power on the basis of a subset of the relevant services may be misleading.

Sometimes market power is measured in the context of market monitoring, rather than on competition policy enforcement. When that is the case, the formalism underlying the standard approach is not required. However, independently of the objective of the analysis, any use of market shares to measure market power in financial services is subject to the limitations identified above.

Still having market monitoring in mind, it is also common to resort to other simple statistics to track market power. Sometimes these statistics relate to switching costs and consumer mobility. We will discuss these in the section 3.

85 It is possible to build equilibrium industry models that formalise the relationship between market power and market shares. However, the restrictive nature of the underlying assumptions, if anything, emphasises the limitations of this approach.

86 Or, to put it differently, any computation of "markets shares" assumes, explicitly or implicitly, a definition of markets.

Other commonly used statistics to measure market power and its variation are, e.g. price levels and price changes. Unfortunately, tariff plans for financial services are usually very complex, which makes the use of these statistics for financial services quite challenging.

3. Switching Costs

3.1 The Standard Approach

In industries where switching costs are large, market shares alone might not measure market power correctly. In those cases it is common to look at indicators of switching costs or consumer mobility to infer the level of market power. However, the standard approach has been used in the past, with some adjustments, to analyse cases where switching costs were perceived as being large. Hence, we will first discuss how the standard approach can be adjusted to handle environments with switching costs, and afterwards we discuss whether indicators of switching costs and consumer mobility can measure market power.

Before proceeding, it is worth recalling that economic analysis has no simple prediction about the relationship between the level of switching costs and market power. In particular, it is false that, in general, higher switching costs lead to more market power. That may occur. However, there are also non-pathological circumstances for which the opposite may occur, just like there are circumstances where higher search costs may lead to less market power. It depends on the strategic environment. Hence, the presumption that higher switching costs lead to more market power has to be justified with the facts that characterise the industry under analysis.

Competition policy enforcement has used the standard approach, with adjustments, to analyse cases involving industries where switching costs are high. This has been done both by accounting for switching costs within the relevant market definition or in the competitive assessment stage. Some of these cases relate to aftermarkets. Typically, high switching costs limit the degree of substitutability between products, and can therefore lead to a narrow market definition, which translates into higher market shares for the firms involved. Besides, competitive assessment has looked at the representativeness of old and new consumers, as well as the market dynamics, in order to evaluate the impact of switching costs in firms' pricing strategies. These statistics help evaluating the relative significance of the ***harvesting*** and ***investment effects***, i.e. firms setting high prices to exploit locked-in consumers, and firms setting low prices to attract new consumers, respectively.[87]

3.2 Complementary Indicators

When switching costs are high and increase market power, it is natural to use indicators of switching costs and consumer mobility to help measure market power. However, choosing the right indicators and evaluating their impact on market power raises several problems. First, it is likely that there are simultaneously various types of switching costs in place like, e.g. contractual costs, shopping costs and learning costs. Some of these costs, like contractual costs, might be observable and measurable. However, others, like learning costs, might not. Basing the analysis on the estimates of the observable and measurable switching costs can be misleading, unless those are the most relevant, or all switching costs are positively correlated. Second, even when issues of relevance and observability can be overcome, it is unclear what the exact impact of switching costs will be. Take the example of contractual fees. Suppose that the time required to process the paperwork and the associated contractual fees required to change of

[87] The ***Harvesting*** effect relates to setting high prices to exploit locked-in consumers, and the ***Investment*** effect relates to setting low prices to attract new consumers.

provider of a mortgage loan have been clearly identified. The impact of these requirements depends on the opportunity cost of time of different customers, e.g. active and retired customers.

Regarding specifically switching rates, consumers may or may not change provider for many different causes. For example, consumers might not change supplier, even though they face zero switching costs, because they are already consuming their most preferred service. In addition, consumers might change supplier, even though they face high switching costs, because their preferences or circumstances changed. Hence, excluding an unlikely controlled environment, or natural experiment, observed switching rates will be the result of various causes, not only switching costs. Another helpful statistic, when price discrimination is possible, which is frequently the case for banking products, is the price differential between new and locked-in customers. However, price differentials may also reflect the lower risk associated with older clients.

To sum up, in the presence of switching costs, and when attempting to infer market power, it is useful to complement the information about markets shares with indicators of consumer mobility or the level of switching costs. However, the relationship between switching costs and market power is a delicate one, and it is unlikely that it will be captured fully by any simple indicator. Relying on a variety of different statistics, while not free from limitations, might allow more robust inferences, reducing the limitations of each individual indicator.

4. Putting Things into Perspective

In the previous sections, we pointed out several difficulties when using the standard approach, as well as measures of switching costs, to measure market power in financial services. Next, recall that there is an alternative: the measurement of market power through the specification and estimation of a structural model.

As mentioned in section 2, the Lerner index is accepted by economists and lawyers as the canonical measure of market power. Hence, a natural alternative to the roundabout procedure of the standard approach is to compute the Lerner index. This is particularly true for complex environments, as those of financial services, were simple indicators are unlikely to correctly measure market power.

In general, the Lerner index cannot be computed directly. Prices are usually easy to observe. On the contrary, marginal costs are usually not observable. However, through the specification and estimation of a structural model one can compute the Lerner index.

For example, as it is well known, in the context of a simple oligopoly model, the Lerner index equals the inverse of the negative of the own-price elasticity of demand of firm. Hence, after estimating the demand system of the associated oligopoly model, one can use the estimates the demand function to compute the Lerner index.

In the past, there was some reluctance in the context of competition policy enforcement for using structural models to estimate market power. However, nowadays most of the reasons used to defend using the standard approach are no longer justifiable. Lack of data is seldom a problem anymore. There are now several firms dedicated to collecting and distributing the relevant data in many industries. Lack of reliable economic models is hardly a problem either. Economic analysis made a big progress in the last three decades and the specification and estimation of these models is now well understood.

We believe that it is time for competition policy enforcement to give a larger role to the estimation of market power through structural models. We believe that these models can be particularly useful in complex environments, as those of financial services, were simple indicators are unlikely to correctly measure market power.

In the context of market monitoring, it seems reasonable to first do a thorough analysis on the level and significance of switching costs, through structural models, and then pursue subsequent monitoring with regular updates on some of these statistics, to follow the market evolution. The insights obtained with the initial detailed analysis will allow more robust inferences from statistics subsequently updated.

ROMANIA

In Romania, the power to implement the competition policy in all economic sectors, including those subject to specific regulations, belongs to the Romanian Competition Council (RCC). This institution is empowered to investigate and decide upon alleged anti-competitive practices and mergers, including in the financial sector.

The authorities that are responsible with regulating, monitoring and controlling the operators from the financial sector and also with protecting the interests of these services' beneficiaries are the National Bank of Romania[88] and the Authority for Financial Supervisory[89].

However, the existence of a legal framework governing the financial sector does not eliminate the simultaneous application of the competition law by the authority empowered to do so.

The overall aim of the RCC's activity is to protect consumers by prohibiting firms to restrict or distort competition through agreements or mergers with their competitors, or to eliminate competitors by any other means than to provide superior products to consumers. Its intervention focuses more on maintaining competition as a process, rather than individual supervision of competitors.

The regulatory authorities constantly monitor the undertakings subject to regulation. Their work aims mainly at ensuring transparency, non-discriminatory services, accounting separation, price fixing in exceptional cases.

Although RCC is not able to enforce economic regulation, it has an important role in the development and implementation of sectorial regulatory mechanisms. This role results from the fact that national competition law entitles RCC to issue advisory opinions on laws or regulations with possible anticompetitive impact.

Regarding the price fixing in the financial sector by the regulator, in Romania there are two such cases:

- On the mandatory and voluntary private pension markets, the regulatory authority in the field, AFS, sets the maximum level of the fee charged by the funds' management companies;

- On the market of mandatory home insurance, the regulatory authority in the field (AFS) sets the insured amount, the insurance premium as well as the fee charged by the companies authorised to provide this type of insurance;

The legislation and policy for consumer protection falls under the jurisdiction of the National Authority for Consumer Protection (NACP) which is also responsible for the implementation of the

88 Credit institutions

89 Insurance-reinsurance companies, mandatory pensions funds with private administration, voluntary pension funds, the capital market.

European legislation on consumer protection. RCC does not have competences in the area of consumer protection regulation.

Ever since 2007, RCC and NACP created a mechanism for co-operation by signing a Protocol, with a view to undertake common actions for the promotion of the consumers' economic interests, in the application of competition rules. It provides for a series of co-operative efforts aiming at informing the consumer organisations about their rights regarding the application of competition law and clarifying how the application of competition rules can result in benefits for the consumers.

The following are a few concerns of the RCC on the competition environment in the financial services sector, regarding the compliance with the rules ensuring free competition between the active players on this market as well as the need to protect the final consumer:

The ability of end consumers to choose one of the financial institutions as a service provider, depending on each specific needs, and their ability to switch at a certain time the banking institution they have a contract with, are key factors in determining the level of competition on the retail banking market.

According to the findings of a market survey conducted in 2008, a number of indicators such as market fragmentation, price inelasticity and the absence of customer mobility suggested that it might not be effective competition in the retail banking market in Romania.

In this context, RCC considered that the transposition of the *Directive 2008/48/EC on credit agreements for consumers and repealing the Council Directive 87/102/EEC* into the Romanian legislation would play an important role in the development of a more transparent and efficient credit market.

Among the provisions aimed to protect consumers more effectively, we mention the provisions on banks' transparency obligations relating to the contractual terms to be followed by the clients. The Directive also regulates the modalities, the amount and the situations where it must be paid a fee for early repayment of the loan, excluding certain categories of credit agreements, such as credit agreements secured by mortgage on a real estate or similar guarantees, loan agreements for financing the acquisition / retention of the property rights (for land or building) and credit contracts with an amount smaller than EUR 200 or higher than EUR 75000 etc.

The authority responsible for the implementation of the Directive 2008/48/EC on credit agreements for consumers, i.e. NACP, requested RCC support and co-operation in its efforts to eliminate the early repayment fee for the customers who want to repay in advance their credits.

RCC has firmly supported the idea of extending the scope of the early repayment fee abolition, arguing that this measure is likely to contribute to improving the customer mobility growth. In this way, the consumer would have a real possibility to choose the most appropriate offer in terms of his needs, without being held captive in a contractual relationship that no longer meets his expectations.

Intense lobbying efforts of the NAPC and RCC led eventually to the adoption of a national legislation which removes at a large extent the early repayment fees for all consumer credits.

In 2011, RCC analysed the impact of the changes on the early repayment fees over the loans.

RCC wanted to see the result of the 2010 joint intervention with NACP, which aimed to improve the legislation in this field in order to increase competition on the market in the benefit of the consumers.

An important indicator in determining the attainment of this goal was the evolution of the refinancing activity in the Romanian banking sector, with expected benefits for consumers of more than Euro 15 million.

In 2013, RCC completed a sector inquiry in order to identify potential anti-competitive practices and distortions on the card payment services, acting to the detriment of the consumer welfare.

The sector inquiry has revealed several significant competition issues on the national market for payment cards, including those relating to the interchange fees level (among the highest in Europe).

In order to find the best solutions for these multilateral interchange fees to be reduced substantially, RCC has initiated discussions with government authorities and with representatives of the business environment on the need to adopt rules for capping its level. In RCC's view, such a regulation could bring benefits to consumers by reducing the selling price (transfer of savings resulting from the multilateral interchange fees reduction, from the merchants to the consumers).

In the event that these discussions will not have any result, RCC may try to solve this problem through its own instruments, which include the opening of an official investigation.

RCC has two ongoing studies on the insurance market of civil liability for cars (compulsory and optional), respectively on the life insurance market (on its two main segments: life insurance, annuities and additional life insurance, respectively life insurance and annuities which are linked to investment funds).

In the insurance sector, RCC also had important contributions in the legislation process on the compulsory home insurance against earthquakes, landslides and floods. The objective of its interventions was to ensure that the insured persons have no restrictions in choosing the insurer and to remove the barriers to entry on the market, with potential adverse effects on the services provided to the insured persons.

RCC looked at a possible abuse of dominant position in the securities sector (the market of registry transactions for securities issuers provided by the Central Securities Depository).

Under the threat of competition from a rival recently entered on the market, the Central Depository[90] has decided to introduce a fee for the issuers who wanted to change the depositary, i.e. by shifting from the Central Depositary to the rival depository.

The competitive concerns of the competition authority refers to the possible abusive behaviour of the Central Depository as a result of the dominant position it holds on the market of registry operations for issuers of securities. Its alleged abuse of dominant position consisted in putting into practice certain tariffs for handing-over the register of financial instruments. Such a practice had the potential to transform the respective issuers in captive customers and thus to prevent the access on the market of other competitors.

The Central Depository proposed RCC behavioural commitments aiming the transfer barriers that issuers might encounter when changing the registry operator: the elimination of the tariff for ending of the registry contract and the establishment of certain transparent procedures for handing-over the registry.

[90] The Central Depositary is a shareholding company active on the Romanian capital market, member of the Bucharest Stock Exchange Group, which ensures clearing and settlements of the transactions with financial instruments and keeps record of the issuers'registries.

In addition, the Central Depository engaged not to introduce transfer penalties for handing-over the registry or other charges with equivalent effect, which would impose payment obligations on the issuers at the termination of the registry contract and thus would increase their transfer costs.

RCC has decided that the commitments assumed by the Central Depository are sufficient for the competition protection, and their fulfilment would remove the situation which led to opening the proceedings. The RCC decision shall apply from the date of its communication for a 4 years period.

RUSSIA

1. In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

The FAS Russia is the federal executive authority authorised to exercise the functions of supervising compliance with the antimonopoly law, including in the financial markets. Other regulatory authorities, asking for some of the functions in relation to the financial services market, have no powers to supervise compliance with antimonopoly law.

2. Does promotion of competition constitute a specific objective for financial regulators/supervisors? What is its relationship with other objectives, e.g. financial stability, consumer protection - is there a hierarchy of objectives?

The Central Bank of the Russian Federation (Bank of Russia) being the authority on regulation, control and supervision of the financial markets, in some cases takes part in the implementation by the FAS Russia the functions of promoting of competition and control over compliance with the antimonopoly law in the financial markets. For example, the conditions and the procedure for establishing a dominant position of financial institutions are determined upon the agreement with the Bank of Russia. In addition, representatives of the Bank of Russia and its regional institutions are required to participate in commissions on review of cases of violation of the antimonopoly legislation by financial institutions supervised by the Bank of Russia. These commissions are approved by the antimonopoly authority and act on behalf of the antimonopoly authority and are empowered to make all decisions on the case, including the conclusion of infringement or no infringement of antimonopoly law.

At the same time the specific purpose for regulatory authorities, exercising the functions in the financial services market, including the Bank of Russia, are not empowered to promote competition.

3. Can financial regulators/supervisors enforce general competition law on the financial services markets?

Control over the antimonopoly legislation is imposed on the FAS Russia and its regional offices. At the same time, as stated in the answer to Question 73, some functions of the antimonopoly authority in the financial markets carried out by the FAS Russia in co-ordination with the Bank of Russia or with the obligatory participation of representatives of the Bank of Russia. We notice that the application by employees of the Bank of Russia of the antimonopoly legislation is possible only with the participation of the committees of the antimonopoly authority to review cases on violation of antimonopoly law. In this case all the documents received such a commission in the framework of the case, are the normative acts of the antimonopoly authority.

4. Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

Taking into account that fact that control agencies don’t have the purpose to promote development of competition, they can’t intentionally interfere in structural features of markets, which prevent the competition. However, it should be noted that the realisation of functions imposed on the Bank of Russia can have positive effect on development of competition in the market.

5. Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

In accordance with provisions of the insurance legislation, insurance tariffs on compulsory types of insurance (it's minimal and maximum values), the structure of insurance tariffs and procedure of their application by insurers in determining on insurance premium under the contract of compulsory insurance, except insurance tariffs (its maximum levels), the structure of insurance premium under the international systems of insurance, are settled by the Bank of Russia

Besides during 2009 - 2010 the Bank of Russia prepared several letters with recommendations to regional authorities of the Bank of Russia to direct to banks writing recommendations on minimising non-marketable amounts of rate of interests. It should be noticed that similar recommendations of the Bank of Russia are not obligatory and, as it appears from the content, letters mentioned above, those recommendations were realised under the realisation of assigned functions for assurance of stability of banking system and exception of threats of depositor's interest. However, at present the Bank of Russia doesn't have powers fixed authorised in the law on limitation of level of interest rates of credit organisations on a constant basis.

The Federal law of 21.12.2013 № 353-FZ «On Consumer credit» (comes into force on 01.07.2014) establishes restriction of price of consumer credit: this price can't exceed mid-market value of full price for consumer credit of corresponding category of consumer credit in corresponding calendar quarter, more than calculated by the Bank of Russia. In case of significant changes in market conditions affecting the full cost of consumer credit (loan), a regulatory of the Bank of Russia can set a period during which the specified the restriction doesn't apply.

6. How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

Controlling authorities cannot guarantee that their interventions to promote competition will have a beneficial effect on consumers of financial services, but they strive for a beneficial impact while making their decisions. At the same time, the controlling authorities, including the FAS of Russia and its regional offices, always take into account consumer's point of view is indicated in their appeals or found during appropriate surveys.

The example of such interventions that had a beneficial impact on the consumers can be the Booklet for Buyer's Credit Borrower worked out by the Central Bank of Russia (the letter of the Bank of Russia on 05.05.2008). The Booklet was prepared by the Bank of Russia during the work under maintenance of legitimacy in the sphere of buyer's credits and the improvement of financial literacy of the population. The Booklet contains the most relevant information that can be helpful for a borrower (or potential borrower) in making decision about taking a loan.

Besides, the cases of violation of the antimonopoly legislation considered by the FAS Russia mostly connected with appeals received from individuals requesting for protection of their rights. For instance, the FAS Russia considered the case of violation of the antimonopoly legislation in striking co-operation agreements insuring personal and property interests by the Agency for Mortgage Lending, OJSC («AIZhK»), and 50 insurance companies. The insurance program was worked out by the «AIZhK». Certain points of the co-operation agreement resulted/could result in the establishment of tariffs of insuring property or other interests according to the program of the «AIZhK», and also in refusal of the «AIZhK» and borrowers to strike agreements with insurers.

In order to eliminate voluntarily the violation, the «AIZhK» and the insurance companies dissolved their co-operation agreement. The «AIZhK» changed its requirements for insurers that involve estimation of insurer's financial stability and make it possible to receive the insurance indemnity by the borrower or the indemnities in case of insurable event, which complies with the borrower's interests.

The significance of the case lies in the fact that during its consideration the antimonopoly authority formulated its approach to arrangements between credit and insurance companies that obliges a party (parties) to insure risks going beyond the risk of loss or damage of the secured asset, more specifically, insuring life and loss of occupational capacity, and loss of land ownership. This attitude was fixed in the resolution of the Government of the Russian Federation on 30.06.2009 №386 «On cases of allow ability of arrangements between credit institutions and insurance companies».

7. There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

Among examples of competition in financial markets, which led to bad outcomes for consumers are:

- Unfair competition of some credit organisations concerning the attracting individuals' funds to deposits.

In 2012, the Commission of the FAS Russia, which included staff from the Bank of Russia on a parity basis, has completed the examination of unfair competition cases of the CB Uniastrum Bank, Ltd, Investtradebank, OJSC, and SKB, JSC.

The basis for initiating proceedings were the numerous complaints of citizens (more than 20) concerning unfair competition of these credit organisations in attracting individuals' funds to deposits.

During the consideration of cases it was found that the above credit institutions in order to attract customers declared profitable conditions of consumer deposits, including the high interest rate and the possibility of calculating this rate for additional fees to the deposit, during the whole term of the deposit. Subsequently, the consumer properties of such deposits were substantially degraded by the banks versus initial stated properties. For example, one of the credit organisations has stopped to accept the additional fees under the contracts of deposit's replenishment, despite the fact that this deposit was a replenishing one. Other organisations introduced additional fees, including the fees from replenishment of the deposit, despite the contracts, providing the right of the replenishment without any restrictions during the term of the deposit.

The calculations have been held during the examination of cases showed that as a result of the measures, the yield from placing additional fees has decreased significantly: on deposits of SKB - from 14-18% to 6%-10% per year, CB Uniastrum - from 9%-20% to 1%-11% per year. Investtradebank OJSC has stopped taking the additional fees and completely deprived the investors guaranteed income (up to 20% per year).

Thus, the measures taken by credit organisations to attract individuals have adversely affected the consumers.

However, such actions of banks could also lead to redistribution in favour of their depositors, and, respectively, caused the losses of competitive banks, faithfully fulfilling the commitments, as well as to undermine the trust of depositors in the banking system as a whole.

The Commission of the FAS Russia recognised that these banks have violated the antimonopoly law and accompanied the decision by determinations, including the return of paid commissions for replenishment to depositors. The decision of the Commission of the FAS Russia was supported by courts.

- In 2007 the FAS Russia has established a violation of the antimonopoly law by the Bank Avangard, LLC, and Insurance Group «Avangard-Garant», CJSC, namely the concluding of agreement that led to the imposition of bank borrowers some unfavourable contract conditions. In particular, the clients of the Bank obliged to insure vehicle which arrives to the bank deposit in Insurance Group «Avangard-Garant», according to the rules that the insured event will not take place if a driver breaks rules of the road. While individuals attracted favourable credit terms, ignoring that the insurance does not take place in accordance with the terms of business turnover and are disadvantageous for consumers. At that individuals were attracted by favourable conditions of crediting, ignoring that insurance doesn't correspond to the conditions of business turnover and are unprofitable for consumers.

By results of consideration the case of the Bank Avangard, LLC, and Insurance Group «Avangard-Garant», CJSC, it was found that they have violated paragraph 5 of Part 1 of chapter 11 of the Law on Protection of Competition. Then the case was closed because they have carried out the voluntary elimination of violations of the antimonopoly law and its consequences.

- The FAS Russia in 2010-2011 has established facts of circulation of false information about consumer properties and services as asset management, misleading consumers.

So, in 2010 the violation was found at «Management Company Troika Dialog» CJSC which contains in paragraph 2 of Part 1 of chapter 14 of the Law on Protection of Competition.

Over the 2006-2008 the Troyka Dialog Management Company, CJSC, publicly declared their competitive advantage in the provision of services in asset management, which expressed in possibility of participation of the customer in choosing management strategy and determine the expected level of risk and profitability of investments, providing customers with a unique and flawless operational reporting, including on a weekly basis, providing trustee services exclusively by the Troyka Dialog Management Company, CJSC, as well as adapting the client portfolios to economic situation on a weekly basis of investment committee decisions.

In 2011 was established a violation of CB Uniastrum Bank, LLC, of paragraph 2 of Part 1 of chapter14 of the Law on Protection of Competition.

In 2007 – 2008 CB Uniastrum Bank, LLC, have posted some information in advertising and informational materials which misleads potential investors and founders of management of common found of bank management (hereinafter – CFBM). Information:

- Control of CFBM activities by the Bank of Russia and observation of investor's interests;

- Strategic purposes of property management and asset structure of CFBM;

- The highest degree of transparency of CFBM and opportunities of trust or of CFBM to monitor the status of investments daily, as well as changing of the investment portfolio for each fund individually, and for the portfolio generally and also the value of its shares using the service «personal account»;

- About the future efficiency and profitability with management of financial documents being a part of CFBM.

According to the FAS Russia, this information indicates on consumer properties and quality of services of CB Uniastrum Bank, LLC, on trust management property of CFBM which characterise satisfaction of real or estimated needs of investors.

Under the influence of specified information individuals transferred millions of rubles to trust management of the Troyka Dialog Management Company, CJSC, and CB Uniastrum Bank, LLC. However the declared advantages didn't carry out the specified companies. Because of current situation clients of the Troyka Dialog Management Company, CJSC, and founders of CFBM under control of and CB Uniastrum Bank, LLC, have lost during the crisis in 2008 which exceeded the level of falling of exchange indicators.

Besides, the Troyka Dialog Management Company, CJSC, and CB Uniastrum Bank, LLC, by means of misleading potential investors concerning consumer properties and quality of service in assets beneficial ownership, gained some benefits over other participants of the relevant commodity market in the form of involving of new investors, who potentially could choose other management company, unit investment fund, common fund of bank management, and also in retention of clients who potentially could terminate the contractual relations with Troyka Dialog Management Company, CJSC, and CB Uniastrum Bank, LLC, if they had not been misled by them. Such actions influence on demand redistribution in the relevant commodity market and can cause damage to other economic entities-competitors owing to loss in potential clients. The similar behaviour in the financial market creates noncompetitive preferencial situation in relation to fair participants of the market.

8. What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets? How is this balanced/prioritised against other duties?

The FAS Russia doesn’t have information on the initiatives of the Bank of Russia about eliminating or reducing barriers of entry into the relevant markets.

However, the FAS Russia has been taking some measures to remove barriers to entry into the financial services market.

In particular, it was found that a number of existing federal laws contain provisions that may create unfair advantages to certain credit institutions and restrain competition in the banking market services. The FAS Russia has developed the draft law, that exclude the provisions in federal law that establish advantages to the certain economic entities.

Currently, the specified draft law was approved by relevant authorities and now it is under consideration by the State Duma of the Federal Assembly of the Russian Federation.

Adoption of this draft law will provide fair access to financial resources for credit organisations, which, by the FAS Russia’s opinion, will enhance activities of small and medium-sized banks and will have a positive influence on their market positions that in turn will contribute to the development of the banking sector and strengthening of the banking system.

9. Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

Lowering of the requirements for installation of ATMs by the Russian Central Bank can serve as an example of changing approaches by the supervisory institutions to simplify entry to markets of financial services.

The Russian Federation Ministry of Antimonopoly Policy and Enterprise Support (since 2004 – the FAS Russia) revealed some signs of breach of antimonopoly legislation in requirements established by the Russian Central Bank in relation to procedure of installation of ATMs. The requirements significantly complicated credit institutions' operations with credit cards, caused to unjustified increase in price of the service, and created barriers to activities of banks in this segment of the market.

Thus, the demand of installing ATMs in business apartments of no lower than 3rd class of break-in tolerance, and also the condition of displaying the intruder alarm on central guard console of private security or to internal affairs authorities call center are unjustifiably steep as for business apartments usually have a high level of safety and are equipped with necessary security systems. Moreover, the cost of 3rd class of break-in tolerance ATMs and security services of internal affairs authorities considerably increases a net cost of the service. According to the experts' estimates, the level of costs on re-equipment of ATM systems to comply with the demands of the Russian Central Bank could make up to $40mln only by the Sberbank system.

The Central Bank of Russian Federation after comprehensive consideration of the antimonopoly body's suggestions significantly lowered the demands of installation of ATMs. As a result, the unjustified barrier was removed, and tens of million dollars for banking community, according to the specialists were saved.

One more example is work on optimisation of equity funds adequacy norms of professional stock market players (further - equity funds adequacy norms) initiated by the FAS of Russia with the purpose of removing barriers of entry to the market.

By the bylaw of the Federal Financial Markets Service (FFMS) of Russia on 30.07.2009 № 09-29 «On amendments of the equity funds adequacy standards of professional stock market players, management companies of investment funds, unit investment funds, and non-state pension funds, approved by the bylaw of the FFMS of Russia on 24.04.2007 № 07-50» (further – bylaw №09-29) since 1 Jan, 2010 equity funds adequacy standards were raised significantly. Such a raise could result in decrease in the quantity of professional stock market players, put obstacles to entry to the market of new competitors and restrain competition in respective commodity markets due to increasing dominance of certain competitors.

Furthermore, the demands to the minimum limit of equity funds that are in force in accordance with the bylaw of the FFMS of Russia on 24.05.2011 № 11-23 «On establishment of the equity funds adequacy standards of professional stock market players, management companies of investment funds, unit investment funds, and non-state pension funds» do not take into account the risks of their operations, they are not differentiated and are considerably higher than similar demands in the USA and Europe.

The FAS Russia believes that in order to remove entrance barriers for professional stock market players it is necessary to differentiate the quantities of equity funds depending on the effect professional players' operations have on their financial stability, and also the consequences of termination of activity of such organisations for clients.

Thus, the values of the minimum limits of equity funds are to be established by federal law.

The FAS Russia sent out the respective suggestions to the Chairman of the Government of the Russian Federation and to the FFMS of Russia.

Considering the suggestions of the FAS Russia, the FFMS of Russia by the bylaw of 24 May, 2011 №11-23 repeal the bylaw № 09-29. The suggestions of the FAS Russia on optimisation of the equity funds adequacy standards of professional stock market players were included into the draft bill № 469229-5 «On altering the Federal Law «On the stock market» and other enactments of the Russian Federation», which passed the first reading in the State Duma of the Federal Assembly of the Russian Federation on 08.02.2011.

10. What have been the major competition interventions in financial services markets in recent years?

10.1 On dominance?

In Russia till 2004 there was a 100% state guarantee only for investors of the largest bank controlled by the state that was the Sberbank of Russia, JSC, which allowed everyone to completely insure its savings against possible losses.

Other credit organisations had no guarantee that significantly worsened appeal of their banking products to consumers. Taking in to account mentioned above as well as a low level of trust of citizens to a banking system, the Sberbank of Russia, JSC held a dominant position in the deposit market, having a share of more than 60%.

Since 2004, when a deposit insurance system (DIS) was introduced in the Russian Federation, any bank having funds of the population in its internal turn-over has been obliged to take part in DIS.

Introduction of DIS positively affected trust of individuals to a banking system. In 2006-2007 the total amount of means of population in member-banks of the deposits insurance system increased by 87, 5%.

With introduction of DIS, a number of banks working with deposits of the population began to increase. Thus, a share of Sberbank of Russia, JSC declined (as of 01.01.2002 by 66,9%, as of 01.01.2003 by 62,8%, as of 01.01.2004 by 59,6%, as of 01.01.2005 by 54,1%, as of 01.01.2006 by 52,9%, as of 01.01.2007 by 52%), and shares of other banks began to rose accordingly.

Thereby introduction of DIS promoted formation of the competitive market environment in the deposit market, as well as more even distribution of deposits within a banking system and, as a result, led to increase in its stability.

In 2006, in environment of sharpening of competitive fighting the Sberbank of Russia, JSC made a decision to raise deposit rates, despite decrease in a refinancing rate by the Bank of Russia. It should be noted that before it the Sberbank of Russia, JSC changed deposit rates in 2004. After 01.01.2005 other credit organisations working in this market also began to change the interest rates on credits.

10.2 On market-wide issue, including price, interest rates or commissions?

In 2003, the Russian antimonopoly body considered a case in relation to NKO Western Union DP East, JSC in which agreements concluded by that organisation with banks were recognised anticompetitive. Under provisions of those agreements member-banks of the money transfer system «Western Union» had no right to enter into other similar payment systems. The position of the antimonopoly authority on inadmissibility of such a condition was supported in court. After cancellation of an exclusive condition, the Western Union almost halved money transfer tariffs.

Subsequently, on the FAS Russia's initiative the Federal law of 27.06.2011 No. 161-FZ «On national payment system» was added with a change that forbade establishing a requirement of non-participation in other payment systems (a condition on exclusive participation) to participants of payment system.

11. Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

Norms governing issues of the prevention and suppression of violations of the antimonopoly law in the financial markets, including cartels and concerted practices, are not different from the general norms.

However, the state control over economic concentration in the financial markets has several features. The state control over economic concentration is a preliminary approval by the antimonopoly authority or its subsequent notification by companies of the intention of companies to make transactions, other actions, the implementation of which has an impact on competition. In order to fulfil this function by the FAS Russia, the Law on Protection of Competition specifies for non-financial organisations of sizes of assets of groups of persons of the applicant and the object of economic concentration as well as the size of the total revenue of the applicants groups of persons and the object of economic concentration in case of excess of at least one of them the organisations must preliminary agree transactions, other actions with FAS Russia or notify the FAS Russia on such transactions, other actions.

In order to realise this function, the antimonopoly authorities in the financial markets sizes of assets of financial institutions without regard to their individual groups are set out. In addition, these sizes are set out by the Government of the Russian Federation on the basis of the FAS Russia's proposals (for credit and microfinance institutions proposals must be agreed with the Bank of Russia). It is worth noting that the sizes of assets of credit institutions and microfinance institutions in order to antimonopoly scrutiny are revised annually in accordance with the data on the growth rate of total assets value specified organisations in the past year. In addition, the Government of the Russian Federation approved the special conditions for the recognition of dominant position of financial organisations, as well as the procedure for establishing the dominant position of a financial institution.

12. What mechanisms are in place to help consumers compare, choose or switch between financial products? For example:

a) Disclosure of comparable information on price and product features
b) Tools for comparing price and/or product features across some or all of the market and to what extent are such tools regulated to protect consumers from misleading or inaccurate comparisons
c) Measures to assist with switching, e.g. through reducing the administrative burden
d) Others

In order to bring full and trustworthy information about financial services to consumers in the legislation of the Russian Federation for certain types of financial institutions set their own requirements for a site in the Internet and a list of information that such organisations have to publish there.

In particular, in relation to credit institutions in chapter 8 of the Federal Law of 02.12.1990 № 395-1 «On banks and banking activity» requires disclosure in the manner prescribed by the Bank of Russia, information on interest rates on bank deposit contracts with individuals (in overall credit organisation without disclosing information on individual persons).

Article 30 of the same Act also established that to borrowers before the credit agreement should be made available information on the full cost of credit, constituting the full cost of the credit payments, as well as other essential terms of the contract.

In addition, come into force 01.07.2014 the Federal Law of 21.12.2013 № 353-FZ «On consumer credit (loan)», which establishes additional requirements for credit institutions publication of information on the essential conditions of the credit agreement available to consumers , including in the Internet and extends this obligation to other types of financial institutions, for which the issue of consumer loans is a professional activity.

The FAS Russia considers it necessary to establish detailed disclosure requirements to all types of financial institutions. Also, according to the FAS Russia, it is advisable to develop a draft law aimed at creating an informational site for financial institutions in the Internet («Reputation site») containing general information about the organisation, information about violations, including antimonopoly and tax violations, the number of complaints for insurance companies - information about the number and order of insurance payments.

Such a site would help consumers to compare financial services proposals to a variety of financial services, tariffs, price, terms, etc. and choose a financial institution drawing on information about the reputation of the company.

In addition, in 2007 the FAS Russia revealed that some consumers were obliged to sign a contract of insurance for the entire term of the loan at the moment of conclusion of insurance contracts as credit borrowers. So, it does not imply the possibility of changing the insurance company.

In order to ensure competition in the insurance market, as well as respect for the rights of consumers to change suppliers of financial services, at the initiative of the Russian Federal Antimonopoly Service the Government of the Russian Federation determined the conditions for the admissibility of agreements between credit and insurance organisations (Government Resolution № 386 of 30.06.2009). This resolution contains a condition that the agreement between a credit and an insurance organisation is admissible if the credit institution, including the obligation of the borrower does not allow to conclude an insurance contract for a period equal to the period of lending, when the credit shall be for a term exceeding one year (for insurance risk borrowers as part of the mortgage lending programs, except for liability insurance for the borrower's failure to perform or improper performance of obligations to repay the loan , requirements for the provision of insurance services may include the obligation of the borrower to enter into a contract of insurance for a period equal to the period of credit unless conditions insurance contract provides for the possibility of making the insurance premium in installments with the payment of the insurance premium at least 1 time per year).

Due to the fact that currently there is a problem of imposing additional voluntary insurance, the FAS Russia has developed proposals on consolidation at the legislative level «cooling period» - the period during which the insurer may cancel the insurance contract without any financial loss, which also will facilitate the ability of consumers to change supplier of financial services.

13. Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

The legislation of the Russian Federation requires disclosure by credit institutions total cost of credit (item 83). However, the requirement of the forms of disclosure of such information has not been established.

In order to improve the perception of potential borrowers information on the total cost of credit (loan) and to allow comparison of their services to extend credit (loans) offered by different financial institutions, the FAS Russia with the participation in the development of the Federal Law of 21.12.2013 № 353- FZ «On consumer credit (loan)» was proposed to consolidate the requirements for the form of bringing credit and other financial institutions to the borrowers the full costs (loan), including by incorporating this information directly to the loan agreement.

In accordance with the proposal, it was found in the law that the total amount of consumer credit (loan) is located in the square in the upper right corner of the first page of the contract of consumer credit (loan) and apply capital letters in black on a white background a clear, legible font maximum size of used on this page font sizes. Area of a square frame shall be not less than 5% of the first page of the contract of consumer credit (loan).

According to the FAS Russia, the adoption of this rule will facilitate more effective protection of the interests of citizens and ensure fair competition in the relevant market.

SWITZERLAND

1. Regimes and Institutional Architecture

1.1 In your jurisdiction, does the responsibility for promoting competition across financial services markets rest with a separate competition authority or the financial regulator/supervisor, or is the responsibility shared?

The Swiss Financial Market Supervisory Authority (FINMA) has no responsibility for promoting / oversee or regulate competition across financial services markets.

The Swiss Competition Commission (COMCO) deals with restraints of competition in financial services markets especially in the banking and insurance sector.

1.2 Does promotion of competition constitute a specific objective for financial regulators/supervisors?

The FINMA has no responsibility for promoting / oversee or regulate competition across financial services markets.

1.3 Can financial regulators/supervisors enforce general competition law on the financial services markets?

Idem.

1.4 Do financial regulators/supervisors have powers to intervene to address structural features of markets that inhibit competition, e.g. high concentration, vertical integration?

Idem.

1.5 Do financial regulators/supervisors have powers to regulate price levels or structures within financial services markets?

Idem.

2. Competition and Consumer Protection

2.1 How do regulators/supervisors ensure that their interventions to promote competition have a beneficial impact on consumers of financial services?

Idem.

2.2 There are examples of competition in financial services markets driving poor outcomes for consumers (e.g. financial services markets in which fierce competition on the headline price leads to increases in hidden or contingent charges). Please indicate whether these are relevant in your jurisdiction and if so how have these been addressed?

To date the Swiss Competition Commission (COMCO) hasn't addressed such an example..Under the current legislation FINMA reacts to observations that are relevant from a prudential risk perspective. An example where competition seems to increase risk is the currently feared building up of risks in the real estate sector.

3. Barriers to Entry

3.1 What initiatives exist to minimise or eliminate regulatory/supervisory barriers to entry in financial services markets?

Judged by the number of participants there is a high degree of competition in the Swiss financial market.

The risk based supervisory approach of FINMA includes relatively lower capital and other supervisory requirements for smaller financial intermediaries. While this approach is motivated by prudential considerations, the relatively lower costs for smaller firm could also have a mitigating effect on market entry barriers.

In addition, on 28 March 2012 the Swiss Federal Council instructed the Swiss Federal Department of Finance, in co-operation with the Swiss Federal Department of Justice and Police and the Swiss Financial Market Supervisory Authority (FINMA), to commence work on a project to prepare the legal basis for the creation of a specific regulation on financial consumer protection ("Financial Services Act").

The new regulation on financial consumer protection should establish the same conditions for all participants in the Swiss financial market.

An important prerequisite for strengthening competition among Swiss providers is the standardised design of regulatory requirements that cover the provision of financial services.

This should not only cover technical aspects such as the complexity of products and the level of protection required by clients, but should also apply generally to all providers to the same extent, with the necessary degree of differentiation. With this kind of level playing field, distortions in the competition between providers would be reduced.

The new regulation would also contain provisions on the cross border business of foreign financial service providers. It would establish the same rules for Swiss and foreign participants in the Swiss financial market. Foreign providers exercising cross-border activity in Switzerland should also have to comply with the rules of conduct enshrined under Swiss law.

Alternatively, it may suffice for foreign financial service providers from certain countries to have to comply with the conduct obligations that apply under the home jurisdiction. According to this kind of equivalency concept, Swiss conduct obligations would be deemed to be fulfilled if the foreign financial service provider adheres to the corresponding legal provisions of their country of domicile, insofar as these regulations and the corresponding supervisory mechanism are deemed by Switzerland to be equivalent. The equivalency assessment should be conducted in a results-oriented manner, and should be based on equivalent client protection in the country of origin of the service provider.

In order for clients of foreign providers to be as well protected as the clients of domestic financial service providers, foreign providers who want to exercise an activity in Switzerland which requires approval should register with FINMA prior to engaging in such activity.

3.2 Are there examples of financial regulators/supervisors changing their approach (e.g. to authorisations or prudential requirements) in order to facilitate new entry in the financial services markets?

None.

4. Intervention

4.1 What have been the major competition interventions in financial services markets in recent years:

On dominance?

The last investigation of COMCO in financial services markets on dominance ended in 2010 with a decision to fine the dominant acquirer in Switzerland with an amount of 5.8 Mio. EUR for an abuse of its position. This acquirer offered the Dynamic Currency Conversion (DCC) functionality to its merchants, but only the payment card terminals of its sister company. The acquirer refused to provide interface information needed for interoperability to other manufacturers of payment card terminals.

COMCO intervened in 2011 against the introduction of an interchange fee by MasterCard for the dominant debit card "Maestro".

On market-wide issue, including price, interest rates or commissions?

COMCO has not conducted sector inquiries in the financial services markets. However COMCO has some major investigations pending in the financial services makets, namely concerning Libor manipulations and interchange fees for credit cards.

4.2 Are cartels, collusive activities, mergers and firm concentrations monitored differently in the financial services market to other markets?

No.

5. Comparability and Access

5.1 What mechanisms are in place to help consumers compare, choose or switch between financial products?

Under the current regulation there are disclosure requirements in place regarding the distribution of collective investment schemes to retail customers.

The new regulation on financial consumer protection (see question 3) would introduce detailed obligations to inform consumers about all relevant characteristics and risks of a financial product as well as all costs that consumers will incur through the purchase, sale, and holding of that product.

If securities are to be offered to retail clients either in or from Switzerland, the issuer in question should be obliged to draw up and publish a prospectus.

Prospectuses should be published on a central electronic platform operated by the relevant supervisory authority or by a third party mandated by that authority.

For complex financial instruments a so called Key Investor Document (KID) should be drawn up, which should be made available at all times in either electronic or printed form, and should be uploaded onto the electronic platform that houses the prospectuses of the financial product in question.

Financial service providers should provide their clients with sufficient disclosure as to all relevant characteristics, risks, costs and expected return of their services.

Moreover, the direct and indirect costs as well as the ancillary costs that would be incurred by the client with respect to the service/product should be disclosed in a transparent way.

If the service is being offered together with another service, or if a product is being offered as part of a package, the provider should inform the client whether the various component parts could also be acquired separately, indicating the relevant costs that would apply.

If investment advisory services are being provided, clients should know whether the advice in question is independent, whether it is based on a comprehensive or limited market analysis, and whether they are being offered ongoing assessment about the suitability of the financial instrument(s) in question.

The information described above should be given to clients in plenty of time for them to make their investment choice.

5.2 Have you used behavioural economics to inform interventions to increase consumer ability to search, compare and switch? How have you used this and has it been effective?

No.

CHINESE TAIPEI

This paper addresses the issues concerning the role of competition in the regulatory system on financial consumer protection in Chinese Taipei. We will illustrate the policy perspective and the co-ordination between the Fair Trade Commission (FTC) and other financial supervisory authorities. In preparing this submission, the FTC consulted with other government agencies, including the Financial Supervisory Commission (FSC) and the Central Bank.

1. The overview of financial market and its regulated measures in Chinese Taipei

By the end of December 2013, there were thirty-nine domestic banks, thirty-one local branches of foreign banks, and twenty-four credit co-operatives in Chinese Taipei. The total loans of the above banks is NT$20,561 billion, NT$567 billion, and NT$392 billion respectively. As for the number of insurance companies, there were twenty-three Non-Life insurances and thirty Life insurances. The insurance premium income in 2013 were NT$124.226 billion and NT$2444.303 billion respectively.

Financial industry has been a highly regulated industry by the government in Chinese Taipei. Take banking as an example, the FSC adopts heavy regulations, including: (1) market entry barriers and restriction on opening branches: pursuant to Article 21 and 26 of the Banking Act, a bank or a branch office commence business operations shall be approved by the FSC, and the FSC may impose restrictions on the establishment of new banks or additional branches in specific geographic areas depending on local financial and economic conditions; (2) restrictions on business activity: pursuant to Article 22 of the Banking Act, a bank shall not conduct any business other than as approved by the FSC; (3) deposit insurance system: pursuant to Article 10 of the Deposit Insurance Act, financial institutions having been duly approved to accept deposits, postal savings or to be consigned to manage trust funds used for the purpose designated by the financial institutions with guaranteed principal and interest (referred to collectively as “deposits”) shall apply to the Central Deposit Insurance Corporation to participate in deposit insurance; (4) deposit reserve system: pursuant to Article 42 of the Banking Act, a Bank shall provide reserves for different types of deposits and other types of liabilities incurred by such bank in accordance with the rates established by the Central Bank. In particular, there has various investment restrictions for commercial banks under the Banking Act, including: (1) restrictions on investment amount: a commercial bank invests in a non-financial related business, the investment shall not exceed 5% of the total paid-in capital or the total issued shares of such business; (2) restrictions on types of investment: a commercial banks may invest in securities, but the types and limits with respect to the securities which may be invested in shall be prescribed by the FSC; (3) restrictions on investing owned assets: with the exception of warehousing for business use, a commercial bank shall not invest in real estate for self use in an amount in excess of the net worth of such commercial bank at the time such investment is made.

The enforcement of the aforementioned financial regulations can reduce the scale of competition among financial enterprises and give financial enterprises the higher profitability than other industrial enterprises. Therefore, the financial enterprises will be strong enough to prevent the financial crisis happening. On the other hand, if an individual financial institution or the market has a illiquidity or financial problems, the above financial regulations can ensure those problems not spread out to other financial institutions or the market immediately, and the goal of financial regulation-safety and soundness of the market will be achieved. In short, the regulated measures adopted by the FSC, including three goals:

(1) promote sound business management at financial institutions; (2) maintain financial stability; and (3) facilitate the development of financial markets. Thus, in some case, competition may not be the primary goal of the FSC.

2. The system and protection mechanism of the financial services market in Chinese Taipei

To enhance competition in the market for financial services and eliminate competitive restrictions or unfair trade practices among financial enterprises, the FTC enacted the "Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of the Financial Industry." Where the financial enterprises are engaged in concerted, deceptive or obviously unfair trade conduct which may violate the Fair Trade Act (FTA), or where mergers involving financial enterprises reach a certain scale, notifications shall be filed with the FTC in advance. In this regard, the objective of the FTC is to ensure effective competition and the protection of the public interest (i.e. consumer interests) in the financial services market. On the other hand, the objective of the FSC is to strengthen the operation of financial enterprises, sustain financial stability, and promote the development of the financial market as well as consumer protection. Therefore, the development of and competition in the market for financial services are supervised by different government authorities in Chinese Taipei. The FSC is in charge of financial regulation and supervision, and the FTC is in charge of competition policy.

However, financial regulations adopted by the FSC or the Central Bank usually are intend to achieve other policy goals (i.e. financial stability) instead of competition, which may sometimes have negative impacts on competition. For example, if an excessive competition affects financial stability, the competent authority may instruct financial enterprises to engage in anti-competitive conduct by itself or through the association. In this case, the FTC may, pursuant to Paragraph 2, Article 9 of the FTA, consult with the competent authority to deal with the matters. In practice, the FTC will consider the policy objective or public interest in relation to the disputed anti-competitive conduct, and consult with the competent authority to determine a proper measure which balances market competition, financial stability, and consumer rights.

2.1 Case example 1: Co-ordination between the FSC and FTC regarding the Bankers' Association's drafting of the "Guidelines on the Financial Service Fee Standards for Financial Enterprises"

In order to encourage banks to charge reasonable financial service fees, the FSC requested that the Bankers' Association of Chinese Taipei (the Bankers' Association) in 2009 draft the "Guidelines on the Financial Service Fee Standards for Financial Enterprises." However, the Bankers' Association claimed that the draft, since it involved partial self-regulation, might be considered a concerted action. The FSC thus asked the FTC for an opinion.

The FTC reviewed the draft and found that Article 3 and Article 4 in the Draft expressly listed standards for cost items and items that could not be charged for. Such articles might potentially restrict competition. In this regard, the FTC requested that the FSC and Bankers' Association provide further information on the issue. In response, the FSC suggested that the purpose of the fee standards was to encourage financial enterprises to charge reasonable financial service fees, which would ensure fair competition and balance the benefits of financial institutions and consumers. In addition, when information such as items regarding the financial service fees, pricing units, and fee amounts are fully disclosed, consumers can make comparisons more easily, thus reducing disputes.

However, the FTC concluded that cost items are an important foundation for pricing. Each individual enterprise has different advantages in its business operations, and the cost calculation might differ as a result of individual advantages. Furthermore, the cost calculation is a part of the internal business strategies. If all cost items were to be listed, then the freedom of business operations would be restricted, and the cost calculation would be rigid. The FTC therefore informed the FSC: “Article 3 in the Draft listed the items for cost calculation. It limits how enterprises calculate costs and might lead to rigidity in trading terms and substantively restrict competition. In addition, each enterprise has different service costs. The cost calculation shall be based on the individual enterprise’s actual operations and shall not be uniformly set by the Association. If the FSC intends to regulate financial service fees, the proper way is to regulate them through acts or regulations according to Article 46 of the FTA.”

Consequently, the FSC replied to the Bankers’ Association as follows: “The FTC suggested that paragraph 2 of Article 3 in the Draft, which lists the items for cost calculation, limits how enterprises calculate costs and might lead to rigidity in trading terms and restrict free competition. Since each enterprise has different service costs, the cost calculation shall be based on the individual enterprise’s actual operations. Cost items shall not be listed to substantially restrict competition. Such regulations shall therefore be deleted.”

3. Regulations on the protection of financial consumers in Chinese Taipei

The “Financial Consumer Protection Act” was promulgated in 2011 in Chinese Taipei. The term “financial consumer” as used in the Act refers to parties that receive financial products or services provided by a financial services enterprise, but does not include (1) qualified institutional investors; or (2) natural persons or juristic persons with a prescribed level of financial capacity or professional expertise. Articles 8-10 of the Act regulate the types of behaviours, including: (1) a financial services enterprise, in publishing or broadcasting advertisements or carrying out solicitation or promotional activities, shall not engage in falsehood, deception, concealment, or other conduct sufficient to mislead another party, and shall verify the truthfulness of the content of its advertisements. The obligation it bears to financial consumers shall not be less than that indicated in the content of the aforementioned advertisements or in the materials or explanations provided to financial consumers in the aforementioned solicitation or promotional activities; (2) before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully understand the information pertaining to the financial consumer in order to ascertain the suitability of those products or services to the financial consumer; and (3) before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully explain the important aspects of the financial products or services, and of the contract, to the financial consumer. The content thereof shall include, without limitation, aspects of material significance to the interests of the financial consumer, such as transaction costs, and possible gains and risks.

Pursuant to Article 1 of the “Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of the Financial Industry,” if financial enterprises exploit their superior position or take advantage of the trait of information asymmetry to cause trading counterparts to make erroneous decisions or compel trading counterparts to enter into dealings with them, thereby restraining competition or competing unfairly, for example, where financial institutions act in concert to fix deposit and loan interest rates or related service fees, or prices of other goods or services; conceal the terms and conditions of applications for credit cards or specific kinds of loans; fail to disclose information on major transactions; improperly restrain borrowers of loans secured by real estate from repaying their loans ahead of schedule; improperly exercise protective measures over creditors’ rights; fail to provide a clear scope of the guarantor’s or the joint guarantor’s responsibility; or at the time of marketing a consumer loan combined with products (or services), fail to adequately disclose the nature of the consumer loan. A financial enterprise, which engages in one of the following restrictive, deceptive or obviously unfair types of conduct, is likely to be in violation of the FTA.

Based on the above Policy Statements, it is shown that information disclosure is the primary objective in designing a regulatory system of financial consumer protection in Chinese Taipei. Such disclosure allows consumers to understand product features and restrictive covenants when making a trading decision. It helps eliminate the adverse selection due to the consumer's lack of information, which might impede market competition.

4. The role of competition in financial consumer protection: actions by the FTC in information disclosure and switching options

To prevent financial enterprises from taking advantage of their superior position or asymmetric information, which might cause the consumers to make wrong trading decisions or force them to trade and lead to restrictive or unfair competition, the FTC has formulated relevant rules. Examples of these concern concealing certain terms or conditions for credit card or special loan applications, failing to disclose material trading information, failing to clearly define the scope of the guarantor's or the joint guarantor's responsibility, or failing to adequately disclose the nature of the consumer loan at the time of marketing a consumer loan combined with products (or services), where the FTC deems such practices to be capable of restraining competition or creating unfair competition by their nature and are able to potentially violate the FTA.

In addition, consumers often fail to consider the additional fees attached to the main product before making a trading decision. Therefore, enterprises tend to conceal information on additional fees. In this case, in their pursuit of a competitive advantage, financial enterprises tend to apply a short-term pricing strategy to attract consumers. However, the loan rates will go up once the promotional period is over. For example, financial enterprises often offer a 20-year mortgage with a promotional discount interest rate for the first three years to attract borrowers, but the mortgage rate will be significantly raised starting from the fourth year, thus increasing the borrowers' burden with regard to the principal and interest payments. Therefore, the Central Bank in 2010 requested that the Bankers' Association notify banks of the following: when underwriting a mortgage, borrowers shall be given obvious warnings regarding the risk of changes in the mortgage rate, and interest rate information shall be fully disclosed. On the other hand, the FTC has also established the following guidelines to regulate the financial enterprises. For example, important terms of the transaction shall be "negotiated in individual contracts," or "contractual terms shall be printed in bold font." The purpose is to arouse awareness of consumers in regard to the additional fees attached to the main product. Consumers will then give full consideration to the main product as well as the additional fees before making the decision.

Besides offering consumers more information on product features and additional fees before the transaction, consumers might face the issue of switching to other products after a transaction is made. In other words, consumers can choose whether to switch to other financial enterprises or to continue trading with the current one. Herein the switching costs play an important role in the above decision. In order to make it easier for consumers to switch to different financial enterprises, the FTC has issued the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises." It stipulated that (1) a financial enterprise shall not refuse a borrower's prepayment of a housing loan and shall issue a certificate of repayment as soon as possible; (2) only when a financial enterprise provides a better loan interest rate with a "repayment prohibited period" to a borrower may it negotiate with the borrower concerning the prepayment penalty for such a loan; and (3) the charge for the prepayment penalty shall decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance. The objective of the above Guidelines is to prevent financial enterprises, given their superior position, from improperly charging borrowers a prepayment penalty and increasing their borrowing costs.

4.1 Case example2: MassMutual Mercuries Life restricted consumers' switching option by improperly collecting housing loan prepayment penalty in violation of the FTA

The Complainant signed a "Supplemental Agreement to Loan Agreement" on April 12, 2006 with MassMutual Mercuries Life for two housing loans of NT$2,400,000 each. Article 2 of such Supplemental Agreement provided that "the fixed interest rate for the period from April 12, 2006 to April 12, 2011 should be 2.95% … 'fixed interest term.' Whereas the borrower intends to obtain the abovementioned prime interest rate and to compensate the lender for any loss arising from the borrower's prepayment after providing such prime interest rate, the borrower hereby agrees to pay the lender a prepayment penalty equal to 1% of NT$1,085,000 whenever the prepayment amount reduces the principal down to NT$1,085,000 or lower."

Pursuant to the Items 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises" provides that "the charge for the prepayment penalty shall decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance." But in this case, the actual penalty calculation used by MassMutual Mercuries Life was merely to deduct the repayment limit from the loan balance. In other words, if the principal is paid down to NT$1,085,000 or lower within the "fixed interest term," the single prepayment penalty is always NT$10,850. Thus, no matter when a borrower repays to the limit mentioned above within the "fixed interest term," the amount of the prepayment penalty is always the same. It showed that the actual penalty calculation failed to decrease progressively by taking into consideration the time a borrower makes the repayment and his loan balance.

The FTC found that from May 2005 to March 2007 MassMutual Mercuries Life used the "Supplemental Agreement to Loan Agreement" in 138 cases, in which prepayment penalties were collected in 21 cases pursuant to the above-referenced article. The FTC concluded that the penalty calculation was inconsistent with Item 6 of the "Fair Trade Commission Disposal Directions (Guidelines) on the Charging of Penalties for the Prepayment of Housing Loans by Financial Enterprises". Therefore MassMutual Mercuries Life was in violation of Article 24 of the FTA and was imposed an administrative fine of NT$200,000.

5. Conclusion

In order to avoid vicious price completion which harms the regular operations of financial enterprises, the FSC sometimes allows industrial associations to set the pricing standards and cost items to be disclosed. This is because the main objective of the FSC is to stabilise the financial market. However, such measures might have the side effect of restricting competition. As a result, the FTC often consults with the FSC in advance to comprehend the benefits of such measures to the financial services market. If it is necessary to restrict competition due to the peculiar features of the financial services market, such limitations shall be set by the competent authority through legislations, not by the associations or through self-regulation to constrain financial enterprises by forcing them to adopt a uniform practice.

Since information asymmetry might exist between financial service providers and consumers, the FSC imposes mandatory disclosure regulations on financial enterprises. If financial enterprises fail to disclose certain material trading information, the FTC might also consider it to be a violation of the FTA. It gives consumers a better understanding regarding the features of and potential fees in relation to financial products before making the trading decision. It also allows consumers to search for, compare and switch to other financial products. Thus it might eliminate the adverse effect on market competition due to information asymmetry.

UKRAINE

1. Regimes and Institutional Architecture

Under the provisions of the legislation on protection of economic competition the authorities are required to promote competition and not to commit any unjust acts that may have a detrimental effect on competition.

Relevant government authorities on the financial services market shall ensure:

- State Commission for Regulation of Financial Services Markets[91] – establishment of a legal framework for the protection of consumers financial services customers, legal support for and development of competitive financial services market;

- National Bank of Ukraine - establishment of an appropriate competitive environment in the banking services market legal support, protecting the legitimate interests of investors and bank customers.

State control over compliance with the legislation on protection of economic competition, protection of the interests of economic entities and consumers from their violations is conducted exclusively by the Antimonopoly Committee of Ukraine.

Legislation on Protection of Economic Competition is general and applies to all areas of financial services, where specific legislation is in effect.

At the same time, the authorities shall facilitate the Antimonopoly Committee of Ukraine in implementing its enforcement powers in support and protection of economic competition, restriction of monopoly and control over the compliance with the legislation on protection of economic competition.

Cost of financial services is determined by their financial services providers themselves. The exceptions are services of compulsory insurance, where the size of insurance premiums and maximum insurance rates or actuarial expectation method is set by the Government.

Also, the Government of Ukraine sets the maximum size of insurance payments for the international compulsory insurance of civil liability of owners of vehicles.

2. Competition and Consumer Protection

In 2011 the AMCU examined number of cases on violation of laws on protection of economic competition by way of abuse of monopoly (dominant) position on markets of insurance of pledged assets of bank customers by certain companies which may result in infringement of other economic entity's and customers' interests.

91 . http://www.kmu.gov.ua/control/en/pub lish/article?art_id=8100879&cat_id=73048

The cases mentioned were initiated on the findings on banking activities to accredit and co-operate with insurance companies. The reason for initiating the case was principally that the AMCU received number of appeals (complaints) against banking actions targeted towards risk insurance only in insurance companies accredited by these banks.

As the result of the complaints' examination the following was established. Typically, under the and conditions of each credit contract in different banks, a borrower has the obligation to insure pledged item for the benefit of the creditor in insurance company accredited (defined, approved or recommended) by relevant bank.

Thus, consumers of banking facilities, before concluding credit contract and if credit conditions were unsatisfactory, had no alternative while choosing bank with acceptable conditions, in particular, free choice of insurance company.

Moreover, on the second year of contract, consumer faced with individual modification of insurance conditions by Bank. In particular, the Bank restricted or changed list of insurance service providers (accredited insurance companies). Borrowers, again, couldn't change financial institution after concluding credit contract. In such case, borrower had to prepay the total loan amount or to loan up in another financial institution.

This led to heavy expenditures and established substantial barriers for borrowers towards changing financial institutions, in particular, judge from insurance conditions of pledged items and other client's risks.

Moreover, 2008 financial crisis established additional problems for borrowers by way of partial or even full lending stop and increase in interest rates.

The AMCU held an opinion poll among private persons – borrowers of different financial institutions on possibility of refinancing in another bank in order to establish or contest this fact. 87% of respondents reported about impossibility of refinancing in other financial institutions.

Thus, borrowers had no ability to refinance in other financial institutions and had to insure in insurance companies accredited by the Bank within the credit contract term.

In such manner, Banks had ability to set their own conditions while providing insurance services and, thus, merchandise turnover conditions.

Therefore, Banks established product markets different from normal markets of insurance services, that is, markets of pledged units insurance and organised operations on these markets independently and without impact of other competitors. Along with that, Banks obtained benefits, in particular, from agreements with insurance companies. Banks had monopoly (dominant) position on mentioned markets.

The AMCU ascertained the fact that Banks imposed exorbitant agent's charge for insuring property of individuals; required from insurance companies to open deposits in Banks and to refinance insurable interests in accredited insurance companies.

Subsequent to the results of case proceeding, AMCU established fact of violation of laws on protection of economic competition and imposed fines.

3. Barriers to entry

Under the legislation on protection of economic competition the decisions of public authorities regarding demonopolisation of the economy, competition and antitrust regulation are subject to mandatory approval of the Antimonopoly Committee of Ukraine.

Approval of the Antimonopoly Committee of Ukraine shall be subject, in particular, to regulation of business activities, specifically, restrictions on the proceedings of some of its species, including through the adoption of regulations and licensing conditions etc.

Thus, during approval of draft decisions on appropriate regulation of financial services, the Antimonopoly Committee of Ukraine, in the case of any reason that could lead to the prevention, elimination, restriction or distortion of competition, introduces remarks on the draft decision and not approve it.

If the authority has taken a decision that does not comply with the legislation on protection of economic competition, or as a result of the ambiguous understanding of what barriers to the promotion of competition appears, the Antimonopoly Committee of Ukraine is authorised to make a direction to the authority to amend the adopted legal act.

4. Intervention

While providing consumer loans, including housing credits, banks obliges the borrower to insure the pledged assets by the insurance company, accredited by the bank.

In 2009 - 2011 the Committee received numerous applications from citizens regarding the solicitation by the five largest banks of one or more (two, three) specific insurance companies for the insurance of property, pledged to the bank pursuant to the loan agreement, and those in turn set inflated prices for their services in comparison with the rates of other insurance companies that have not been accredited by the bank.

Such a situation occurred at a time when more than 300 insurance companies conducted their activities in the insurance market.

In order to balance the interests of the bank as the beneficiary under the insurance contract, which has the right to negotiate appropriate insurer for the contract of property insurance, and the consumer, who must have a choice of insurance companies in a competitive environment, the Antimonopoly Committee of Ukraine recognised the right of the bank to have a list of accredited insurance companies, but upon condition that the consumer shall be provided with the right to choose the insurance company from a list of accredited (but not solicitation), and the insurance company - the right to know the requirements of the bank, subject to compliance with which it can be accredited by that particular bank.

Given the above, in order to avert misuse prevention, elimination or restriction of competition or infringement of the rights and interests of consumers, in April 2010 the Antimonopoly Committee of Ukraine provided recommendations to the five largest banks concerning the organisation of co-operation with insurance companies during consumer lending.

After reviewing these recommendations leading banks and insurance companies, and professional association members of these markets have developed "Rules for co-operation between banks and insurers related to lending", which the Antimonopoly Committee of Ukraine approved in April 2011.

In accordance with these Rules:

1. at any time the number of insurers that meet the requirements of the bank and that the borrower has the ability to enter into a contract of insurance must be at least 5 insurers, which maintain insurance other than life insurance, and 2 insurers of life insurance ;

2. the Bank shall provide the public informing of the borrowers about the possibility of insurance in any insurance company, which is proved by the bank, compliance with the requirements of the bank, compliance of the insurance contract with the requirements, and also provide a list of insurance companies;

3. the Bank shall not:

   – set limits to the minimum number of insurance contracts and the amount of responsibility for them, which should be concluded between the borrower and the insurance company, that meets the requirements of the bank, including within a given time;

   – establish the condition of mandatory allocation of funds of insurer on deposit accounts of the Bank to the list of requirements for insurers;

4. If bank establishes compliance of the insurer with requirements of the bank, a co-operation agreement, another agreement and/or contract of agency may be concluded between the bank and the insurer. In this case, such a contract of the bank with the insurer, and also the insurance and loan contracts may not contain conditions:

   – that prohibit an insurer or bank to contract on identical or similar terms with other banks or insurers;

   – that provides that the bank must require the borrower to insure risks in a particular insurance company for the entire term of loan if the loans are performed for more than 1 year;

5. The amount of compensation that the bank may require from the insurer for performing the functions of an insurance agent should be non-discriminatory and cost- justifiable.

UNITED KINGDOM

1. Introduction

Competition plays a key role in the smooth and efficient functioning of markets, and ultimately delivers better consumer outcomes. It affects prices, efficiency and innovation. As such, competition in financial markets is a key area of concern for the U.K.

Four institutions currently have competition functions in respect of financial services markets in the UK, namely the Office of Fair Trading (OFT), the Financial Conduct Authority (FCA), the Prudential Regulatory Authority (PRA), and the Competition Commission (CC). The Competition & Markets Authority (CMA), came into existence in October 2013 and will bring the competition and certain consumer functions of the OFT together with the CC.

Section II of this submission summarises the U.K.'s institutional arrangements for the regulation of competition in general and briefly describes the enabling legislation. Section III sets out in detail the legal powers and responsibilities of the regulators.

Section IV describes in four separate subsections key competition issues examined in financial markets to date. In particular: transparency, consumer inertia, the role of price-comparison websites, and the influence of behavioural economics. The approach to, and treatment of, these issues is described through use of examples, case studies, and discussions of previous investigations and interventions into financial markets.

This submission is not intended to be a comprehensive examination of U.K. institutional organisation, market interventions, or public policy. Rather, it is intended as a brief look at certain actors in the regulation of U.K. financial markets, illuminated through the use of illustrative examples.

2. Institutional Arrangements

The OFT and the Competition Commission are the principal competition authorities for the UK. Since 1 May 2004 the OFT has had the power to apply and enforce Articles 101 and 102 of the Treaty on the Functioning of the EU in the UK. The OFT also applies and enforces domestic competition legislation. Under the Competition Act 1998 (CA98), it has powers to investigate businesses suspected of engaging in certain types of prohibited anti-competitive behaviour and to impose tough penalties on those that do. Under the Enterprise Act 2002 (EA02), the OFT also gathers general intelligence on markets and where it observes potential competition issues, it carries out phase one merger and market studies, referring them on to the CC where appropriate.[92]

The CC is a non-departmental public body which conducts in-depth phase 2 investigations into mergers and markets and also has functions with regard to the major regulated industries.

[92] http://www.oft.gov.uk/about-the-oft/legal-powers/legal/

The Competition & Markets Authority (CMA) came into existence in October and will receive its powers on 1 April 2014 when the OFT and CC will cease to exist.

On 1 April 2013, the Financial Conduct Authority (FCA) became the UK's financial services conduct regulator. The FCA is operationally independent of Government and funded entirely by the firms it regulates. The FCA has three statutory objectives, one of which is "to promote effective competition in the interests of consumers".[93] From April 2015, the FCA is expected to receive concurrent powers by virtue of the Financial Services (Banking Reform) Act 2013.

3. Legal Powers

As of April 2015 the FCA will be granted new competition powers: specifically, the competition law powers contained in Part 1 of the CA98 (i.e. powers to take enforcement action against anti-competitive agreements and abuses of a dominant position) and Part 4 of EA02 (i.e. power to undertake market investigations in relation to financial sector activities and, if necessary, refer the market to the CMA.[94]

The FCA's concurrent powers under CA98 reflect the OFT's current powers to investigate and enforce against breaches of EU/UK competition law, encompassing anti-competitive agreements and abusive conduct, in relation to financial sector activities. The FCA will not be granted any powers in relation to mergers: all powers of merger review are retained by the CMA. This amendment also ensures that the FCA will be a National Competition Authority for the purposes of EU competition law.[95]

Ahead of gaining concurrent competition powers, the FCA expects to use market studies as its main tool for examining competition issues in the markets it regulates. If the FCA concludes that competition is not working well in a market and that it needs to take action, it can intervene to promote effective competition using a number of measures, including:

- policy or regulatory changes
- rule-making, including changes to or potential withdrawal of existing rules
- using firm-specific enforcement powers
- publishing guidance
- proposals for enhanced industry self-regulation.

The FCA also has the power to refer a market to the OFT (and the CMA, when established) to examine further. The FCA might approach the OFT where, for example, it does not have the statutory powers to address the potential issue because it goes beyond the FCA's regulatory remit.

93 The other operational objectives are: "to secure an appropriate degree of protection for consumers" and "to protect and enhance the integrity of the UK financial system"

94 Section 129 and schedule 8 Financial Services (Banking Reform) Act 2013.

95 And thus will be a member of the European Competition Network, which allows for co-operation between the European Commission and National Competition Authorities.

3.1 Powers to regulate price levels or structures within financial services markets

In general, the FCA does not have powers to regulate price levels or structures. The FCA has recently been mandated by the UK government to impose a price-cap in relation to "pay-day" lending as part of its consumer credit remit.[96] It considers this to be a unique example of price regulation and does not expect to consider price regulation frequently, if at all, in the context of competition policy.

The Financial Services (Banking Reform) Act 2013 requires the FCA to create a new payment systems regulator in the UK. The Payment Systems Regulator (PSR) will be a separate legal entity with its own board and statutory objectives. The PSR must, as far as is reasonably possible, act in a way that advances one or more of its three objectives – the promotion of competition, innovation and the interests of services-users.

The OFT does not have the power to impose price regulation directly as part of its work in financial services. It can make recommendations to regulators or Government in the event that, following an investigation or study of a sector, it considers that such regulation would be appropriate to remedy competition concerns.

Moreover, the OFT may, in certain circumstances where the legal test is met, make a market investigation reference to the CC. The CC has wide-ranging powers to impose remedies in the event it finds an adverse effect on competition in the market referred to it. These remedies can include price regulation but they also include remedies designed to address the structural issues that give rise to the competition problems. Guidance on the CC's approach to the selection and design of remedies is available in *Guidelines for Market Investigations: Their role, procedures, assessment and remedies (CC 3 (Revised))*[97].

The UK government, as part of a consultation on pension charges,[98] is currently considering whether a charge cap[99] should be applied to pension charges. The OFT, as part of its *Defined contribution workplace pension market study,*[100] considered whether it should also recommend a charge cap for all pension charges. The OFT concluded, however, that preferable alternative remedies were available and that, more generally, charge caps can create a risk of unintended consequences. For example, set too high, a cap can become a target for providers. Set too low, a cap can create incentives for providers to lower quality and/or impose less visible charges elsewhere. While the OFT did not rule out a charge cap, it felt it should be considered in full knowledge of the different charges and benefits that apply in the market and of the risks that a cap might entail.

4. Competition issues in Financial Services markets

In approaching competition issues the FCA will analyse the markets it regulates and target its resources based on the areas that it considers carry the greatest potential consumer detriment, and where it believes it can intervene and help consumers most.

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96 http://www.fca.org.uk/news/statement-on-a-cap-on-the-cost-of-payday-loans

97 http://www.competition-commission.org.uk/assets/competitioncommission/docs/2013/publications/cc3_revised_.pdf In response to question 79, the remedial action selected in CC investigations is explained.

98 www.gov.uk/government/consultations/better-workplace-pensions-a-consultation-on-charging

99 The Department for Work and Pensions have proposed three options for the charge cap 1) a cap of 1 per cent 2) a cap of 0.75 per cent 3) a 'comply or explain' cap where any pension charge above 0.75 per cent has to be justifiable on value for money grounds to the Pensions Regulator.

100 www.oft.gov.uk/OFTwork/markets-work/pensions/

In considering potential intervention to promote competition, the FCA will carefully consider the impact on consumers of any such intervention. This may involve consultation, economic research including "road-testing" of potential remedies to ensure their efficacy and appropriateness.

Certain financial services markets in the UK have demonstrated poor outcomes for consumers. The FCA is currently developing its approach in addressing these issues. The FCA is considering some of these issues in relation to its market studies into Cash Savings, Retirement Income, General Insurance Add-Ons and SME Banking. Some of the features that inhibit effective choice and competition are:

- Complex products
- Infrequent purchases
- Complex/opaque pricing

The OFT and the CC have considered a range of issues in financial services markets, of which a lack of transparency and consumer inertia/switching rates have been recurrent. To date, such issues have largely been addressed through informational remedies.

The FCA is also examining other, more recent developments in financial markets, such as the role of price comparison websites and the growing recognition of the part played by behavioural economics. The following sections treat these subjects individually, and provide examples of their treatment by U.K. competition institutions.

(i) Lack of transparency

The OFT has undertaken a significant amount of work in relation to retail banking markets in recent years where poor outcomes for consumers arise due to the nature of the product, where there is often no headline price, with firms obtaining revenue from a wide range of complex hidden charges that may not be visible to consumers or may not be understood due to their complex nature. These hidden charges are not subject to competitive pressure.

4.1 Case Study: OFT Personal Current Account market study (2008)

The OFT's market study into the Personal Current Account market published in 2008[101] found low levels of transparency over charges and costs coupled with a high proportion of banks' total revenues made on charges and costs. In addition, the complexity of the charges made it harder for consumers to control the costs they incur (some consumers paid significant amounts: 1.4 million consumers paid over £500 in charges in 2006) and a significant group of consumers underestimated the level and frequency of banks' charges.

Linked to this market study, the OFT launched its bank charges investigation in 2007. The investigation examined the fairness of personal current account unarranged overdraft charging terms under the Unfair Terms in Consumer Contracts Regulations (UTCCRs).[102]

In its review of the personal current account market published in 2013 the OFT noted that, 'there has been a significant reduction in the level of overdraft charges. Overall the OFT estimates that there have been consumer savings of between £388 million and £928 million since the 2008 market study. During this

[101] http://www.oft.gov.uk/OFTwork/markets-work/personal/

[102] http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/UTCCRs/

period, unarranged overdraft revenues fell substantially, and despite increased revenues from arranged overdrafts and debit interest, there is a substantial saving for consumers. While the overall reduction is significant and welcome, this appears to be largely the result of pressure from OFT and others, rather than competition between providers. While the OFT welcomes the shift away from hidden and unexpected charges to charges that are clearer and more predictable, overdraft charging structures remain complex and there is more providers could do to simplify charges and make it easier to compare the costs of different accounts.'[103]

The OFT also agreed on a number of recommendations with providers following its 2008 market study designed to give consumers more control over the accounts and when they incur charges as well as greater transparency of their accounts and charges applied. In its review of the personal current account market, published in 2013, the OFT noted that

> *'providers have made progress in helping consumers control when they use unarranged overdraft facilities and the charges they incur. Mobile technology along with balance alerts mean it is easier for consumers to manage their account and avoid incurring charges. However, awareness of text message alert services is low. Furthermore, opt-outs from unarranged overdraft facilities are not offered across the board – providers typically offer opt-outs on a limited range of accounts which often attract a monthly fee. Providers have begun rolling out the transparency initiatives previously agreed with the OFT. However, providers have been slow to make progress – three years after these initiatives were agreed, not all customers have received an annual summary. Early indications are that this information will improve consumers' understanding of the costs of their account and therefore aid decision-making but the slow progress in roll-out means the impact to date has been limited.'*

4.2 Case Study: OFT Defined contributions workplace pension market study (2013)

The OFT's *Defined contribution workplace pension market study*[104] cited concerns that, to the extent that competition on charges takes place, it tends to focus on the level of the visible Annual Management Charge (AMC).[105] This focus on AMC raised the following concerns:

- The lack of comparability of the AMC and the lack of visibility of other charges, costs and expenses levied from a member's pension pot may be preventing competition on overall charges working optimally.

- The rate of switching and the method of individually pricing schemes mean that many pension scheme members may not benefit from falling AMCs on newer schemes.

The OFT was also concerned that the focus on the AMC hindered competition on the key elements of value for money:

- Many employers do not have the necessary understanding of workplace pensions to make good judgments on the value for money of their pension schemes.

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103 http://www.oft.gov.uk/OFTwork/markets-work/othermarketswork/pca-review/

104 http://www.oft.gov.uk/OFTwork/markets-work/pensions/

105 The AMC is levied as an annual charge on the value of the scheme fund. This charge may cover a combination of the sales, administration and fund management costs of the fund.

- Many employers do not always prioritise all the elements which the OFT considers to be key to assessing value for money when they select a scheme. Whilst some employers appear likely to prioritise ensuring that the charges that their employees face are as low as they can be, there is little evidence that many employers prioritise the key elements of scheme quality, such as investment design and performance, or scheme governance.

- Instead, OFT research suggested that many employers that are automatically enrolling employees into pensions for the first time are likely to prioritise minimising the costs to themselves of setting up and administering the scheme.

The OFT also raised concerns over the practice of increasing the AMC that members pay when they stop contributing to a pension scheme; known as Active Member Discounts (AMDs). In particular, the OFT highlighted the following concerns:

- AMDs add complexity to charging structures that many scheme members are ill-equipped to cope with or understand. Given scheme members' probable lack of understanding and engagement, the OFT considered that many scheme members may be unaware of their charges rising when they stop contributing to a scheme - leaving many of them vulnerable to paying higher charges than they need to.

- When employers negotiate these charges the OFT also believed they are likely to focus on negotiating the lowest possible charges for 'active' members who are likely to be current employees. There is little incentive on employers to limit the higher charges applied to members that have stopped contributing into the scheme, most likely because they have left the employer. Those members who no longer contribute to the scheme will not therefore have anybody actively considering whether their charges still represent value for money and their ability to persuade their former employer to look after their interests is likely to be low.

The OFT developed a number of remedies to address these concerns:

- To address the OFT's concerns about lack of independent scrutiny of pension schemes, the OFT recommended the formation of independent governance committees (IGCs).

- The OFT recommended that the UK government consult on improving the transparency and comparability of information about pension charges - including whether providers could disclose a single Annual Management Charge and investment transaction costs - and quality of schemes in order to make employers' initial choice of scheme easier.

- The OFT recommended that the UK government consult on preventing schemes being used for auto-enrolment that penalise members with higher charges when they stop contributing into their pensions.

The CC has also conducted a range of market investigations which have identified and addressed transparency concerns.

4.3 Case Study: CC Personal and current account banking services in Northern Ireland market investigation (2007)

The inquiry was referred by the OFT on 26 May 2005 following a ‘super complaint’ from the consumer association *Which?* in conjunction with the General Consumer Council for Northern Ireland, and an initial OFT study into the sector.

The CC found that banks had unduly complex charging structures and practices and did not fully or sufficiently explain their charging structures and practices. Customers generally did not actively search for alternative personal and current accounts (PCAs) or switch banks.

The CC developed remedies that were designed to help customers make informed choices about PCAs as well as improve the switching process. Remedies included the following:

- A requirement to provide descriptions of the banks' PCA services in plain English terms that are easy to understand.
- A requirement to provide clear explanations on the levels of charges and interest rates and how and when they are applied both before a customer chooses a PCA and when opening a PCA, as well as on statements and when customers are pre-notified of charges and interest payments.
- A requirement to provide more information on bank statements including details of charges and interest rates.
- A requirement to provide every customer with an annual summary of the charges they have incurred and of interest paid.
- A requirement to give customers at least 14 days' notice before deducting overdraft charges and interest from their account.
- The introduction of improvements to the switching process, including offering a charge-free and interest-free overdraft facility to new customers for at least three months. Alternatively, banks were required to guarantee to refund any costs incurred from failures in the switching process regardless of whether the charges and interest were incurred as a result of an error by the new bank.

The CC published an Order to give effect to the remedies on 19 February 2008. Measures relating to better and clearer information were in place by 1 July 2008, with the remainder—which involved greater changes to software systems—implemented by 1April 2009.

On 10 January 2011, the CC reviewed and decided to amend the 2008 Order.[106] The main reason for the changes was that since the 2008 Order was made, the UK had implemented two European directives — the Payment Services Directive (PSD)[107] and the Consumer Credit Directive (CCD) [108] — which include requirements relating to PCAs. Having received advice from the OFT, the CC decided to remove those parts of the 2008 Order that duplicate or are incompatible with the requirements of the European directives. A number of requirements under the Order were removed because they were no longer relevant or because they exceeded the requirements of the directives. The CC has retained some of the original 2008 requirements as the EU directives are not tailored to address all of the specific competition problems identified in the Northern Ireland personal current account banking market. These are:

- A requirement to provide descriptions of the banks' PCA services in plain English terms that are easy to understand.

106 Notice of making an order to vary the Northern Ireland PCA Banking Market Investigation Order 2008 made pursuant to section 161 of the Enterprise Act 2002, 28 February 2011

107 Directive 2007/64/EC

108 Directive 2008/48/EC

- A requirement to provide clear explanations on the levels of charges and interest rates and how and when they are applied both before a customer chooses a PCA and when opening a PCA, as well as on statements and when customers are pre-notified of charges and interest payments.

- A requirement to give customers at least 14 days' notice before deducting overdraft charges and interest from their account.

- The introduction of improvements to the switching process, including offering a charge-free and interest-free overdraft facility to new customers for at least three months. Alternatively, banks are required to guarantee to refund any costs incurred from failures in the switching process regardless of whether the charges and interest were incurred as a result of an error by the new bank.

4.4 Case Study: CC Home credit market investigation (2006)

On 20 December 2004 and following receipt of a super complaint made by the National Consumer Council, the OFT referred the Home collected credit market to the Competition Commission (CC) for investigation. Home credit is the provision of credit, typically small sum cash loans, the repayments for which are collected in instalments (often weekly or fortnightly) by collectors who call at the customer's home. The OFT was of the view that competition among home credit lenders appeared to be restricted, with lenders having limited incentive to compete on price or to attempt to win business by taking over other lenders' loans.

Upon investigation, the CC identified that the absence of competition between home credit lenders and the incumbency advantages enjoyed by established lenders meant that borrowers paid higher prices (totalling at least £75 million per annum) than they would pay in a competitive market.[109]

The CC's remedies aimed to develop greater price competition, to extend competition for home credit borrowers and to reduce significantly the detriment suffered by borrowers settling loans early:

- An obligation to share customer account information with at least two CRAs.

- An obligation to post price information on a comparison website (LendersCompared.org) run by a CC approved operator.

- A strengthening of the regulatory requirements on annual statements.

- An increase in the early settlement rebate.

The remedies were implemented by means of an order in October 2007. Aspects of the remedy were varied in 2011 to avoid conflict with the implementation of the CCD.[110]

An evaluation of the effectiveness of the remedy published in 2013[111] found that the remedy package addressed some of the features identified by the CC and significantly reduced the detriment caused by those features. In particular:

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109 http://webarchive.nationalarchives.gov.uk/+/ http://www.competition-commission.org.uk/Inquiries/current/homecredit/index.htm

110 Notice of the CC making an order to vary the Home Credit Market Investigation Order 2007 made pursuant to section 161 of the Enterprise Act 2002, 24 February 2011

- The data-sharing remedy, where used effectively by lenders, reduced information asymmetries between lenders, which helped reduce incumbency advantages.

- Those customers that have used the LendersCompared.org website benefited from reduced search costs and being more aware of price differences between lenders.

- The changes to early settlement rebates led to a transfer from lenders to customers of around £35 million a year, approximately half of the detriment the CC identified in 2006. There is no evidence of this change having led to increases in the headline cost of credit.

However, the CC also found that the remedy requiring on-demand statements appeared to have delivered relatively little benefit for home credit customers.

4.5 Case Study: CC store card credit card services market investigation (2006)

The reference was made by the OFT on 18 March 2004 following an informal fact finding inquiry in response to questions about consumer protection and competition in store cards raised by the Treasury Select Committee in the course of its investigation of the transparency of credit card terms. The Treasury Select Committee was concerned that interest rates on store cards were higher than they would be if competition were working well, that consumers did not have adequate information and that the process of offering store cards was unsatisfactory in several respects.

The CC found that weak competitive pressure on store card APRs and store card insurance premiums allowed credit providers and retailers to keep these at higher levels than were justified by costs. Consumers therefore paid at least £55 million a year more than they should. The CC's remedies aimed to generate competitive pressures on the setting of APR levels and the choice of insurance cover.

The CC considered that recent measures introduced by government, regulatory bodies and the finance industry would not deal with the adverse effect on competition identified. The following remedies were therefore introduced:

- An obligation to provide certain key information, prominently displayed on the front page of monthly statements, including the APR, the interest payable in the following month, the level of fees and charges, a wealth warning and insurance details.

- An 'APR warning' displayed on monthly statements for accounts with APRs of 25 per cent or more, including a warning that cheaper credit may be available elsewhere.

- An obligation to provide an option for direct debit payments to be displayed in monthly statements.

- Providers offering insurance packages containing payment, price and purchase protection were required to offer as separate items (i) payment protection cover alone and (ii) a package of price and purchase protection.

The CC's remedies were evaluated in 2011.[112] The CC found it difficult to evaluate with precision the impact of the remedy package in this case. Store card usage, average store card interest charges and outstanding store card balances had all fallen since the reference to the CC in 2004. With regard to the CC's

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[111] Understanding past market investigation remedies – Home credit (2013)

[112] Understanding past marketing investigation remedies – Store cards (2011)

APR warning remedy, the CC observed that the proportion of store cards with APRs below the warning threshold of 25 per cent increased from 30 per cent in 2005 to 57 per cent in 2008.

The timing of the changes and the actions of retailers and store card providers during the CC's investigation was consistent with the view that the reference and the publicity during the CC's investigation led to customer demand changing and store card providers making a competitive response and anticipating the CC's remedies. The implementation of the remedy package appeared to have sustained and enhanced this effect.

(ii) Consumer inertia/switching rates

4.6 Case Study: OFT Personal Current Account market study (2008)

Among concerns identified in the OFT market study into the Personal Current Account market published in 2008[113] were problems with switching providers.

4.7 Case Study: CC Personal and current account banking services in Northern Ireland market investigation (2007)

As noted at 36 above the CC considered issues related to customer inertia and switching in the Northern Ireland PCA services market investigation. Remedies included the offering of charge-free and interest-free overdraft facilities to new customers for at least three months and the requirement that banks guarantee to refund any costs incurred from failures in the switching process regardless of whether the charges and interest were incurred as a result of an error by the new bank."

4.8 OFT Personal Current Account market study (2008)

The OFT's market study into the Personal Current Account market published in 2008[114] found low levels of transparency over charges and costs coupled with a high proportion of banks' total revenues made on charges and costs. In addition, the complexity of the charges made it harder for consumers to control the costs they incur (some consumers paid significant amounts: 1.4 million consumers paid over £500 in charges in 2006) and a significant group of consumers underestimated the level and frequency of banks' charges.

Linked to this market study, the OFT launched its bank charges investigation in 2007. The investigation examined the fairness of personal current account unarranged overdraft charging terms under the Unfair Terms in Consumer Contracts Regulations (UTCCRs).[115]

In its review of the personal current account market published in 2013 the OFT noted that, 'there *has been a significant reduction in the level of overdraft charges. Overall the OFT estimates that there have been consumer savings of between £388 million and £928 million since the 2008 market study. During this period, unarranged overdraft revenues fell substantially, and despite increased revenues from arranged overdrafts and debit interest, there is a substantial saving for consumers. While the overall reduction is significant and welcome, this appears to be largely the result of pressure from OFT and others, rather than competition between providers. While the OFT welcomes the shift away from hidden and unexpected charges to charges that are clearer and more predictable, overdraft charging structures remain complex*

113 http://www.oft.gov.uk/OFTwork/markets-work/personal/

114 http://www.oft.gov.uk/OFTwork/markets-work/personal/

115 http://www.oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/UTCCRs/

and there is more providers could do to simplify charges and make it easier to compare the costs of different accounts.' [116]

4.9 OFT Defined contributions workplace pension market study (2013)

The OFT's *Defined contribution workplace pension market study*[117] cited concerns that, to the extent that competition on charges takes place, it tends to focus on the level of the visible Annual Management Charge (AMC).[118] This focus on AMC raised the following concerns:

- The lack of comparability of the AMC and the lack of visibility of other charges, costs and expenses levied from a member's pension pot may be preventing competition on overall charges working optimally.

- The rate of switching and the method of individually pricing schemes mean that many pension scheme members may not benefit from falling AMCs on newer schemes.

The OFT was also concerned that the focus on the AMC hindered competition on the key elements of value for money:

- Many employers do not have the necessary understanding of workplace pensions to make good judgments on the value for money of their pension schemes.

- Many employers do not always prioritise all the elements which the OFT considers to be key to assessing value for money when they select a scheme. Whilst some employers appear likely to prioritise ensuring that the charges that their employees face are as low as they can be, there is little evidence that many employers prioritise the key elements of scheme quality, such as investment design and performance, or scheme governance.

- Instead, OFT research suggested that many employers that are automatically enrolling employees into pensions for the first time are likely to prioritise minimising the costs to themselves of setting up and administering the scheme.

The OFT also raised concerns over the practice of increasing the AMC that members pay when they stop contributing to a pension scheme; known as Active Member Discounts (AMDs). In particular, the OFT highlighted the following concerns:

- AMDs add complexity to charging structures that many scheme members are ill-equipped to cope with or understand. Given scheme members' probable lack of understanding and engagement, the OFT considered that many scheme members may be unaware of their charges rising when they stop contributing to a scheme - leaving many of them vulnerable to paying higher charges than they need to.

- When employers negotiate these charges the OFT also believed they are likely to focus on negotiating the lowest possible charges for 'active' members who are likely to be current

116 http://www.oft.gov.uk/OFTwork/markets-work/othermarketswork/pca-review/

117 http://www.oft.gov.uk/OFTwork/markets-work/pensions/

118 The AMC is levied as an annual charge on the value of the scheme fund. This charge may cover a combination of the sales, administration and fund management costs of the fund.

employees. There is little incentive on employers to limit the higher charges applied to members that have stopped contributing into the scheme, most likely because they have left the employer. Those members who no longer contribute to the scheme will not therefore have anybody actively considering whether their charges still represent value for money and their ability to persuade their former employer to look after their interests is likely to be low.

The OFT developed a number of remedies to address these concerns:

- To address the OFT's concerns about lack of independent scrutiny of pension schemes, the OFT recommended the formation of independent governance committees (IGCs).

- The OFT recommended that the UK government consult on improving the transparency and comparability of information about pension charges - including whether providers could disclose a single Annual Management Charge and investment transaction costs - and quality of schemes in order to make employers' initial choice of scheme easier.

- The OFT recommended that the UK government consult on preventing schemes being used for auto-enrolment that penalise members with higher charges when they stop contributing into their pensions.

4.10 Case Study: CC SME banking market investigation (2001)

The CC was asked to investigate the supply of banking services by clearing banks to small and medium-sized enterprises (SMEs). This was one of the last such references under the Fair Trading Act 1973, where the ultimate decision was taken by the Ministers referring the case (here the Secretary of State and the Chancellor of the Exchequer).The Director General of Fair Trading (the DGFT; the predecessor to the OFT) then implemented such remedies the Minister required.

The CC found significant market concentration, 90 per cent of liquidity management services being supplied by four clearing groups in the separate geographical markets of England and Wales, Scotland and Northern Ireland, reluctance on the part of SMEs to switch banks, and significant barriers to entry and expansion in markets for liquidity management services and general purpose business loans. The CC identified a number of practices, each carried out by some or all of the clearing banks, which restricted and / or distorted price competition and constituted a complex monopoly situation. For example, there was a similarity of pricing structure between the main clearing banks, including in general no payment of interest on current accounts; a pattern of differentiation in charges by the clearing banks, with free banking generally confined to certain categories of SMEs, in particular start-ups and, to a lesser extent, switchers; and use of negotiation to reduce charges for those considering switching.

The recommended remedies applied to all the eight main clearing groups, to reduce barriers to entry and expansion and address adverse effects on choice and information, and included the following behavioural undertakings:

- To complete a substantial percentage of all account switching within five working days where no borrowing is involved and in all but the most exceptional cases ten working days if borrowing is involved (in the absence of security), with compensation if those timescales are not met.

- To publish their performance objectives and their efficiency in achieving them.

- To use best endeavours to resolve the problems associated with originators of direct debits and publish a report on progress in doing so within 12 months.

- To examine ways to allow more rapid transfer of security and publish a report on this within nine months.

- To impose no charges on closing or switching accounts other than cost-related charges related to early termination of loan arrangements or transfer of security.

- To publish whether or not they are willing to pay towards legal/valuation charges for transfer of security, and if so in which circumstances and up to what limits.

- To provide a portable credit history on request to a timescale and format to be approved by the DGFT.

- Not to impose any requirement to hold a current account to obtain a loan or hold a deposit account unless required for legal or technical reasons.

- To compile price information relating to clearing banks' standard tariff prices for money transmission services and interest paid on current and short-term deposit accounts in a form approved by the DGFT that would enable price comparisons readily to be produced, and to publish or procure the publication of such information free of charge in a manner approved by the DGFT.

- To bring to the attention of their SME customers the availability of such information in a manner approved by the DGFT.

- To inform SMEs whether a charge for the use of an unauthorised overdraft has been levied.

- To investigate the feasibility, costs and associated benefits of a national scheme in which the main clearing groups would be required to enter into arrangements (not necessarily reciprocal) with those without a local branch presence in a particular area for use of branches on fair, reasonable and non-discriminatory terms to be approved by the DGFT and publish the results within one year.

In addition, the CC recommended that:

- The four largest clearing groups be required to pay interest on current accounts in England and Wales at Bank of England base rate less 2.5 per cent, or to offer SMEs accounts free of money transmission charges or to offer SMEs a choice between the two options.

- That the same four clearing groups should publish and provide to the DGFT information on any changes in money transmission charges for SMEs.

- Other measures be included in the British Bankers' Association proposed industry code to safeguard the relationships between SMEs and clearing banks relating to the provision of a statement of cleared balances on request, reasons for refusal of loan applications on request, clarity of contract terms, errors and compensation, and security.

The Chancellor of the Exchequer and the Secretary of State accepted all the findings and recommendations made by the CC. The DGFT was asked to obtain undertakings from the banks on the remedies.

4.11 Case Study: CC Payment protection insurance market investigation (2009 and 2010)

In the investigation, the CC found that the majority of payment protection insurance (PPI) policies were sold with the financial product they were covering. As such, customers were generally unaware that others offered these policies and they rarely shopped around to compare providers and policies and they rarely switched providers. This led to a point of sale advantage, absence of competitive pressures and higher prices. Remedies included a prohibition on selling PPI at the same time as the credit and for a defined period thereafter (point of sale prohibition).

Following a legal challenge by Barclays, the Competition Appeal Tribunal (CAT) ruled that the CC had failed to take into account the potential loss of convenience to customers in their assessment of the proportionality of the point of sale prohibition remedy. On the remittal, the CC looked at the loss of convenience based on a multitude of evidence, including internal documents and survey evidence. The CC concluded that a point of sale prohibition for PPI sold alongside mortgages, personal loans and credit cards would be an effective and proportionate remedy in light of the new analysis.

Remedies included:

- A point of sale prohibition.
- A prohibition on single insurance premiums being changed for the entire term of the product being sold.
- Informational remedies, advertising requirements, an obligation to provide a personalised quote and annual statement to customers and an obligation to provide certain information to the OFT and the Money Advice Service.

Remedies were implemented by means of an order which commenced on 6 April 2011. These have not yet been evaluated or reviewed.

(iii) Price comparison websites

The FCA is currently conducting a market study into the Cash Savings Market. The FCA is also currently conducting a thematic review into price comparison websites in order to assess their accuracy and reliability and to ensure that they are not misleading consumers.[119]

Price/product feature comparison tools are a potential tool the FCA may use to encourage switching/reduce consumer inertia in order to improve competition in certain markets. This type of remedy has been considered by competition authorities in relation to other markets and there is some experience of their use in the financial markets (e.g. in Home Credit – see para 64) . There are myriad examples of private price comparison tools which are widely used by consumers in the UK in some financial services markets.

As noted at paragraph 42 above, the CC established a price comparison website as a remedy in the Home Credit market investigation. The website, LendersCompared.org, was approved by the CC. The website was aimed at increasing customers' awareness of differences in prices charged by home credit lenders (and others), reducing search costs and increasing lenders' incentives to compete on price, by making it more likely that offering lower prices would result in additional sales and by making it easier to

119 http://www.fca.org.uk/news/the-fca-launches-review-into-price-comparison-websites

produce comparative price advertisements. The CC carried out an evaluation of this remedy in 2013 and found the following:

- Those customers that have used the LendersCompared.org website benefited from reduced search costs and being more aware of price differences between lenders. However, the CC was unable to attain whether the website actually led to an increase in switching.

- After a high initial usage of the website, the number of visitors dropped significantly after the launch. Whilst potential customers seemed to be finding their way to the site from lenders' websites, there is potentially more that could be done to make use of the site.

- On the supply side, the website had clearly had a positive effect and has helped to achieve its aim of increasing focus on the price of loans. This is supported by the evidence on site usage, with a number of returning visitors, some of whom will include lenders themselves. The CC were told that this had led to an increase in competition at the local level. Whilst it is not possible to quantify this effect, the behaviour of lenders suggested it was significant.

The UK Payments Council recently launched a service to allow consumers to switch current accounts within 7 working days.[120] It is too early, at this stage, to assess its impact on competition in the market but we consider that measures to encourage switching in financial services markets generally may be capable of improving competition in those markets and lead to better consumer outcomes. As noted above, informational remedies (such as information on price and product features) have been implemented in several financial services markets such as Cash ISAs and Northern Ireland Banking. There has been little *ex post* assessment of their effectiveness in the context of financial services markets, however.

(iv) Behavioural economics

Finally, the insights provided by behavioural economics form an important part of the FCA's integrated approach to Market Failure Analysis (MFA) and Cost Benefit Analysis (CBA).

In April last year, the FCA published two occasional papers on behavioural economics to explore how people make financial decisions. These can be found at:

- OP 1: http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-1

- OP 2: http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-2

Behavioural economics recognises that consumers can make decision-making errors that are persistent and predictable. Insights from behavioural economics can be applied to the regulation of financial markets and result in regulation that can help people make better decisions and minimise losses arising from our human errors.

Drawing on evidence from behavioural economics is particularly important for regulators of financial services because financial products are inherently complex and involve decisions that have a major impact on a consumer's financial well-being. Also, consumers often have little opportunity to learn from past mistakes.

At the FCA behavioural economics is an important part of analysing how markets work and it is integrated into all stages of regulatory analysis: identifying and prioritising risks to consumers,

120 http://www.paymentscouncil.org.uk/switch_service/

understanding the root causes of poor consumer outcomes, and designing an appropriate intervention. It is essential, however, not to think of behavioural biases in isolation, but instead as one of the forces that shapes consumer behaviour and, through it, market outcomes.

Behavioural economics doesn't prescribe any specific remedies. Depending on the nature of the problems identified, appropriate interventions may involve providing additional information to consumers, changing how choices are presented, or directly controlling features or distribution channels of a particular financial product. Because insights from behavioural economics show that context plays a large role in shaping consumer behaviour, it is often desirable to test remedies before implementation where this is feasible and proportionate.

For the FCA's competition studies in particular, insights from behavioural economics can inform development of hypotheses about why competition in the market may be ineffective.

In addition to drawing on existing academic and regulatory evidence, the FCA is also investing in undertaking new behavioural research (such as experiments or field trials) to advance its understanding of how consumers behave in financial markets.

5. Conclusion

In U.K. financial markets, regulation, application and enforcement of competition law are currently divided between three regulating bodies: the CC, FCA and OFT. Starting on 1 April, 2014, the CC and OFT will cease to exist, having been folded into the CMA. Starting from April 2015, the FCA will have concurrent powers with the CMA to regulate competition with respect to financial markets.

The U.K.'s financial markets regulators have identified several areas of potential consumer harm in financial markets including transparency, consumer inertia and switching behaviour, the role of price comparison websites, and lessons from behavioural economics. Where failures are identified, the CC, FCA or OFT may recommend or undertake appropriate and proportional remedies.

Applying appropriate interventions can make markets work better for consumers, improve efficiency, drive down prices and encourage consumer-friendly innovation. Dealing with financial markets may be particularly difficult for consumers because products are often unfamiliar and complex, and consumers may not have good opportunity to learn about products, or have the tools to accurately assess risk and uncertainty. The objective of the competition regulators is to make markets work well for consumers by applying principals that recognise the importance of protecting consumer interests in financial markets.

BIAC

The Business and Advisory Committee ("BIAC") to the OECD welcomes the opportunity to provide its views to the OECD Competition Committee for the discussion on Competition and Consumer Protection in the Financial Sector.

1. Introduction

The financial sector has always played a crucial part in the economy. Banks, in particular, by collecting deposits from savers and making credit available to investors, contribute to economic growth: investment that would not have taken place without such financing becomes available.

In light of this role, a banking crisis tends not to be limited to the banking sector only but affects other sectors. The latest financial crisis shows the consequences that decreased wholesale lending (between banks) had on credit to enterprises and consumers.

Reflecting some views that the financial crisis was exacerbated by deregulation and inadequate supervision by regulatory authorities, regulatory supervision has increased and regulatory entities have taken various measures to avoid the re-occurrence of a similar crisis by imposing, for example, higher capital requirements, proposing or separating riskier activities from retail ones, etc. Since the crisis, competition authorities have also increased their efforts in this area; it is notable that until recently there had been a limited number of competition cases involving the financial sector.

2. Competition and consumer policy

The recent increased competition law enforcement in the banking and financial sector provides an opportunity to discuss the interaction between competition and consumer policies. Both share the common goal of advancing consumer welfare and delivering a well-functioning market or protecting the consumer by removing distortions in the marketplace. While the former tends to look in principle at the supply side (whether companies are delivering what consumers want by competing effectively), the latter focuses mostly on the demand side (whether consumers are being treated fairly and have all the information they need in order to make informed choices). They both reinforce each other: a well-functioning competitive market will deliver outcomes that consumers want and, if customers are well informed and able to shop around and switch, this will have an impact on the way companies compete.

Financial regulatory and consumer protection authorities have developed tools (such as market studies, surveys and sometimes the use of behavioural economics) to look at how firms conduct their dealings with their customers. They also look at whether existing regulatory measures have adverse effects on competition, for example through making it more difficult for firms to enter markets or expand; they assess the way in which consumers or firms take decisions (in order to avoid consumers not receiving what they need); and, finally, trying to understand the reasons why more consumers do not switch suppliers. Some of these issues overlap with what a competition authority would consider in carrying out its investigations.

The sector that has received the greatest attention from a consumer protection standpoint has been retail banking: this includes personal current accounts ("PCA"), savings, mortgages, personal loans and credit cards. This paper will focus on these products. Each of us will have one if not all of these. And a mortgage is usually the largest financial commitment any of us will ever make. Their importance for consumers has led authorities and governments to pay considerable attention to the way these markets work and whether they deliver the right outcome for consumers.

Consumer protection has always played a key role in retail banking for several reasons:

- Many products are inherently complex for most people. Financial products have several features and, sometimes, complex charging structures. Consumers might not have the expertise or appropriate information to choose the most suitable product for them;

- Financial decisions, especially those involving insurance products, may require assessing risk and the possibility of the occurrence of a future uncertain event. Consumers can easily make mistakes about the probability of an event occurring and, therefore, under or over-insure themselves;

- Some financial decisions, such as choosing a pension plan or mortgage, are made infrequently, if not only once. Without previous experience it is easy to make a mistake and the consequences will become clearer only much later in the future.

To address these issues, both consumer and competition authorities have considered the provision of adequate information to customers, how to foster comparison methods, and examined switching rates and barriers to entry.

3. Provision of information

Banking products are sometimes necessarily complex. They must provide a number of different services and different customers use them in different ways. Customers do not want to devote a lot of time to reading product information and comparing different products from different providers. They do not always know in advance how much they will use particular options offered by different providers, such as overdraft facilities or additional benefits with certain types of credit cards.

As a consequence, it is not straightforward to improve transparency, as there are trade-offs. Providing customers with lots of information about complex products can overwhelm some of them. Developing simpler products may mean that some customers are not offered products that meet their needs[121]. And there is also a trade-off between protecting vulnerable or careless consumers who would not read the small print, and giving sophisticated consumers the finely tuned advice and services they want.

It is important to stress that consumers do have responsibility for the decisions they make – although it is also true that they cannot always be expected to have enough financial knowledge, information and understanding of complex products and risks to decide what is best for them. That is an important role for consumer protection rules. And financial education plays a key role and influences consumer protection; the higher the level of financial education, the better the level of knowledge and understanding of consumers, empowering them to access more advanced and innovative financial products and services.

This however does not mean that all consumers should be protected against all risks. A consumer who is willing to invest in a riskier product in order to achieve better returns should be fully prepared to bear the consequences of the expected return not materialising. Assuming the proper disclosure has been made and the provider has performed the duties expected, consumers bear the responsibility to evaluate the

121 Competition in the market brings products and services that are different from one provider to the next – standardised products and services are not the best outcome for consumers.

information provided to them and ultimately take responsibility for the their choices. Consumer protection should not mean protection against all investment risks.

From a regulatory perspective it is therefore essential that consumers are treated in a way that is appropriate for their level of financial knowledge and understanding and that companies treat customers fairly. This means that products and services marketed to them are designed to meet the needs of identified consumer groups. It also means that consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale; the advice they receive is suitable and takes account of their individual circumstances; they are provided with products that perform as firms have led them to expect and do not face unreasonable post-sale barriers imposed to change product, switch provider, submit a claim or make a complaint.

4. Price comparisons

But while the provision of information is important, it is not sufficient. Customers should be able to compare products and services and choose the one that suits them most.

One obvious comparison criterion is price, but it is not the only one and consumers should be aware of other facts that are also important to make an informed decision, including factors such as the quality or level of service provided. There are now many price comparison websites that attempt to rank the various products by price, or give consumers the option to rank it in this way. While this might be appropriate for products that are easy to compare such as savings, it leads to difficulties issues in relation to other products, such as insurance products.

If the comparison is only on price, whoever has a low headline price will be placed at the top of the list. Consumers could then buy the cheapest insurance product, but this could well turn out to be a low quality product with many small print exclusions or excesses and not appropriate for that specific consumer. Therefore the suppliers at the top of the list my not be the cheapest or best value when the total deal is taken into account.

With complex products, making the comparison easy is not always simple and the customer has to look at all the details of the product and not just the price. But there is a limit to what can be done by a single financial institution: information needs to be comparable and available across different products and providers and this requires co-ordination among competing providers to agree on a common format. In this area, there have been several regulatory initiatives to make comparison of certain product easier for example by obliging providers to offer a similar fact sheet with the key information but more can be done.

Once consumers have the appropriate information and can compare products, they should be able to switch.

5. Switching[122]

The ability to switch is of course important. Customer mobility and choice are essential to stimulate competition in retail banking. Customers must have the ability and willingness to switch banks in order to drive and stimulate competition in retail banking.

122 One issue closely related to switching is the difficulty encountered in some countries to open an account. While the reasons are in many instances laudable (to avoid money laundering or to stop tax avoidance), it can raise barriers to switching for some customers.

Sometimes business feels that authorities put too much weight on the importance of switching in the banking sector to assess whether the market is competitive or not. Authorities believe that the degree of customer mobility is low, that customer-bank relationships are usually long-term because of customers' inertia and because switching costs (both financial and non-financial - for example costs related to physical change of accounts, transfers of bill payments, lack of information, contract costs) are usually high. There is a perception that banks do compete for new customers for example by offering higher initial deposit rates, but later on, once the customers are locked in, those rates are reduced. Ease of switching then becomes for an authority the key to solve these problems.

It is important to stress that switching levels alone are not a good indicator of how competitive a market is or of whether customers get good outcomes. A competitive market where customers get good service and competitive prices would have low levels of switching. A market where service levels and customer outcomes are poor may have high levels of switching. Relatively low levels of switching are not sufficient to conclude that markets are uncompetitive or that consumer outcomes are poor.

Clearly, switching rates vary between products and tend to be higher for savings and, in some countries, mortgages[123]. Many authorities however are concerned that there is little switching in PCA mostly because customers are not sufficiently confident in the switching process. Consumers should not be put off switching, because of perceptions about the length of time it takes to switch, errors in the switching process or the inconveniences triggered by these. In PCAs, consumers may be nervous about the risk of errors in transferring payment instructions to the new account, which could result in missing debit payments for important household bills. Errors in the switching process come from many sources. Some of the largest numbers of errors come from non-bank direct debit originators (e.g. utilities). As causes of these errors lie outside banks' direct control, this could add to the complexity and cost of building solutions for addressing the switching problems.

In the UK in September 2013 a 7 day error-free switching process has been introduced. The new and the old bank will do all the work for the customer and for a certain period any direct debit landing on the old account will be automatically redirected to the new account. It will be interesting to see the impact on switching rates.

6. Regulation as a barrier to entry

In recent years, financial regulatory authorities have been keen to avoid a repeat of the crisis and therefore they have introduced further new onerous requirements on financial services, for example higher capital requirements, more supervision of their activities, higher burden to get a banking license and the separation of riskier activities from retail ones. All those requirements, while laudable from a financial stability point of view, clearly make it more difficult for new entrants.

Governments always welcome more competition in this sector and they should consider carefully these new requirements. For example in 2013 the UK Treasury asked the FCA and the Bank of England to review the prudential and conduct requirements for new entrants to the banking sector to ensure that they are proportionate and do not pose excessive barriers to entry or expansion. The outcome of the review was the introduction of reduced capital requirements at the authorisation stage, removal of new bank liquidity premium, and a changed authorisation process to ease business start-up.

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123 It should also be noted that there is no clear benchmark in assessing the appropriate level of switching in different retail banking products and services and whether the given level is related to better service and more competition in that particular market.

However, as always, there has to be a tradeoff. The prudential requirements are there to protect consumers from providers that would not have appropriate expertise or sufficient capital. At the same time building that expertise and raising sufficient capital raises barriers for new entrants.

7. Competition perspective of structural separation

Following the crisis, there have been discussions on the structure of the banking sector. For example in the US, the debate has concentrated on the so called Volker rule, which prohibits banks from engaging in proprietary trading that is not customer related. In the UK, the discussion has been on ring-fencing, which is the separation within the bank of the retail arm from the rest of the activities. France and Germany have looked at slightly different options. Following these national initiatives, the European Commission has launched recently its proposals in this area.

The rationale behind these reforms is that, by separating riskier activities from retail banking, vital retail services would continue even in a crisis, it would be easier to manage and resolve such banks in case of difficulties, and government might not need to intervene as much as they had to do during the recent crisis.

While all of this is laudable in principle, it comes at a cost. Under current UK proposals, some functions in the ring-fenced bank will have to be independent of the rest of the bank, giving rise to obvious duplications. Centralised IT systems might have to be split to ensure the continuity of the retail bank if there is a crisis. And customers seeking a variety of services will have to be moved between banking legal entities. It is obvious there will be considerable implementation costs and those will be borne ultimately by consumers.

But one interesting aspect of the reform is that, in the interest of fostering stability, the impact of such proposals on competition has not received the appropriate attention. The banking sector has become more and more globalised. A globalised world economy needs global banks capable of handling every type of transaction as well as traditional lending. Different proposals in different jurisdictions will have an impact on the competitiveness of the banking sector in that jurisdiction. Investors, in a global market, might prefer to deal with universal banks rather than ring-fenced banks. This is an example of when a well-intentioned reform can sometimes have unintended consequences.

8. Behavioural economic

In the past, consumer policy and competition policy ran along quite separate lines, with little interaction between the two; in recent years economists have shown a greater interest in consumer policy. First, the modern consumer arguably faces more difficult decisions, involving more choices, than in the past. Second, the economic profession has recently seen a dramatic rise of behavioural economics, which takes into account imperfect consumer decision-making more than in earlier analysis.

Regulators sometimes get frustrated because they don't fully understand how and why customers behave as they do, and this results in them sometimes focusing on the wrong things, or proposing ineffective remedies.

Behavioural economics brings together two very complementary toolkits into something that provides a deeper understanding of what people do: economics and psychology. If we could better understand real consumers, we have a chance to better understand how and where competition works effectively and how and where intervention may be required.

Behavioural economics can offer some insight on the way firms should provide information, adjust how choices are presented to consumers, require products to be promoted or sold only through particular channels or only to certain types of clients or require products to contain specific features.

However, authorities should be careful when using behavioural economics as a basis for their decisions as the possibility of errors is quite great. There are inherent limitations and this applies not only to the methodologies used but also to the evaluation of the survey data they often rely. They could lead to errors and inappropriate conclusions.

9. Conclusion

Many of the issues that authorities active in consumer protection look at or the remedies that they implement are similar to what a competition authority assesses and enforces.

In some countries competition authorities also deal with consumer protection (such as the Australian Competition and Consumer Protection, the Danish Competition and Consumer Authority, the Office of Fair Trading in the UK[124], the Federal Trade Commission in the US), while in others the functions are divided between two distinctive authorities. Moreover, in some countries competition agencies incorporate regulatory functions (such as in Spain and The Netherlands), while in others, regulatory entities have competition functions. For example, (1) in the UK, the FCA (Financial Conduct Authority) has the duty to promote effective competition when addressing consumer protection objectives; and (2) in the US, the Consumer Financial Protection Bureau (the US's first federal agency focused on protecting consumers in the financial marketplace) encourages fair and competitive operation of consumer financial markets and promotion of fair competition by consistent enforcement of consumer protection. This means that in some cases regulatory bodies exercising consumer powers must achieve their desired outcomes by using solutions that promote competition. The various systems have each advantages and disadvantages. For example, it has been argued that achieving intense competition in the financial sector could be detrimental to stability (as it might lead to excessive risk taking), while too much regulatory oversight could chill investment activities.

While the application of both competition law and consumer protection in this sector is laudable, it has the possible downside of two different authorities looking at the same issue and prescribing conflicting outcomes. This increases the burden that companies may face while being investigated by different authorities, triggers the risk of substantive and jurisdictional conflicts between antitrust, consumer protection and financial regulation and enhances regulatory uncertainty. It would therefore make sense for the financial and competition authorities to work closer together and co-ordinate their activities.

The co-coordination of consumer protection and competition policies has obvious benefits for companies and consumers. The application of one policy should not interfere with the other one. On the contrary, these policies should mutually sustain each other in identifying conduct that harms consumers. Consumer protection concerns arising in the financial sector should have to be balanced with competition issues, and vice versa

124 The OFT will cease to exists on the 1st of April 2014 and replaced by the CMA, Competition and Market Authority which will lose some of its consumer protection powers.